THE

FUNDAMENTALS

OF

AMERICAN GOVERNMENT

INCLUDING THE GREAT DOCUMENTS ON WHICH ITS INSTITUTIONS ARE FOUNDED AND THE STATUTES RELATING TO NATURALIZATION AND EXPATRIATION, WITH AN INTRODUCTION AND EXPLANATORY NOTES.

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The Lawyers Co-operative Publishing Company
Rochester, N. Y.
1907.

E. R. ANDREWS PRINTING CO., ROCHESTER, N. Y.

PREFACE.

The title of the book shows what it is, or, at least, what it is intended to be. It is prepared primarily for the information of foreigners intending to become American citizens; but it is hoped that it will also be useful to experienced citizens, and to native Americans coming into citizenship. The chief purpose of the book is the presentation in convenient form of the four great documents which compose the foundation of our government, namely, Magna Charta, the Declaration of Independence, the Articles of Confederation, and the Constitution of the United States. These have been preceded by a general introduction, in which I have tried to set forth, as briefly as practicable, the elements of our system of government, the relations sustained by the states to one another and to the nation, and also some observations on the rights, privileges, immunities, and duties of citizens.

The increased tendency manifested by recent naturalization laws to raise the standard of foreign citizenship by imposing educational qualifications, requiring more knowledge of the American system of government, seems to demand the preparation of a volume from which the foreigner may obtain some knowledge of the fundamentals of our government.

The situation presented by the large immigration of recent years, by which our population is increased monthly by the hundred thousand, has aroused the attention and excited the patriotic interest of large numbers of our

people, who appreciate the possibilities of absorption into our citizenship of so many persons without experience in self-government as understood and applied in the United States. The proper instruction of these strangers as a preparation for the high duties of citizenship, and also to insure the preservation of Anglo-Saxon free institutions, justifies the activity manifested at the present time by various patriotic societies and individuals in devising plans for training new citizens. Such instruction has very wisely been made one of the objects of the Society of the Daughters of the American Revolution, composed of some sixty thousand patriotic women. Other similar societies are also giving their attention to this subject, and we may soon expect to see a general movement throughout the country for the instruction of newcomers, not only in the general principles of our institutions, but also in the various forms of state and municipal government, with the different methods of local administration.

It must be remembered that, by the process of naturalization, the stranger becomes a voter in the city, town, or village where he lives, and entitled to participate in municipal affairs as well as in state or national affairs. This book is intended only for the larger national field. Whether it will be found available for use in schools must be determined by experience, but it is believed that persons interested in the instruction of foreigners and others in the principles of our government will be able to use the book by a series of questions or otherwise, which may be supplemented by special instruction applicable to the particular state or municipality. The book is not a treatise, but it is hoped that it may be found useful as a compendium or handbook, and that the reader will be able to obtain from it a general view of our national

government and of its relations to the states and to the people.

The statutes relating to naturalization have been included so that the foreigner may conveniently obtain a knowledge of the principles on which American citizenship is granted, and the procedure by which he may become a member of the American nation. It is also hoped that judges who have jurisdiction to admit foreigners to citizenship will find this compilation of the naturalization and expatriation laws, with the great fundamental documents, a convenience in this department of judicial administration.

The preparation of this book gives occasion for the observation that there is now no uniform national suffrage. The 14th Amendment has given us national citizenship, but suffrage is still a matter of state policy. In some states an alien is permitted to vote after he has made a declaration of his intention to become a citizen. This gives him, even before citizenship, the same right of suffrage that in other states is permitted to citizens only, which produces an inequality in the right of suffrage, and makes it possible for many persons who are not citizens to vote for President and Vice-President, for members of Congress, and for members of state legislatures by whom United States senators are chosen, and in this manner persons who are not yet citizens participate directly in national affairs. A state should, as a matter of internal policy, have the power to determine the qualifications of voters on questions of local interest, but it seems perfectly obvious that on national questions there should be one uniform rule of suffrage, based on citizenship only. This situation can be brought about only by an amendment to the Federal Constitution, or else by an amendment of the Constitutions of those states in which

alien suffrage is now permitted. Early conditions in these states apparently justified the offer of liberal terms of suffrage, and immigrants settling there became citizens for all practical purposes several years before they could be naturalized. Perhaps improved modern conditions, the growth of population, and commercial advantages would justify those states in changing the existing policy on the question of suffrage, and adopting the rule which prevails in the majority of the states, by which the right of suffrage is based on citizenship. It may be worth while for those who are taking up the matter of the instruction of foreigners to consider the propriety of advocating the adoption of a uniform rule of national suffrage. The rule, if adopted, should probably apply only to future cases, without affecting the right of suffrage already conferred on aliens by existing state Constitutions. C. Z. L.

ALBANY, N. Y.
OCTOBER 1, 1907.

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INTRODUCTION.

The large immigration of persons to the United States, with the intention of making a new home in this country, suggests the need of a book containing a brief outline of our form of government, and the great documents which are the foundation of our free institutions. It is believed that every right-minded person thus coming to the United States with the intention of becoming a citizen wishes to become an intelligent citizen, to know something of his rights and duties as a citizen, and how the government is organized and maintained. The children of foreigners will learn many of these things in the schools, and by observation and experience will easily come to understand what it means to be an American citizen; but persons who are beyond the school age must in some other way learn how to become intelligent members of society in their adopted country. This book is intended as an aid to such persons.

In a broad sense the United States may be called a nation of immigrants. In the early days the colonies along the Atlantic coast were founded by immigrants from Europe, who came under the authority of various charters granted by European governments authorizing companies of persons to discover and occupy lands on this continent within specified boundaries; and from these charters, and settlements made under them, arose, for the most part, the colonies which afterwards formed the United States. In those early days Europe had become overcrowded. This Continent seemed to be substantially unoccupied, ex-

cept by roving tribes of Indians, and the new world promised abundant room for the surplus population of Europe. Governments encouraged emigration, and sought to establish colonies where the people might have better opportunities than could be found in the older countries. The rapid increase of population in the colonies shows that the people of the old world were glad to avail themselves of the new opportunity.

POPULAR GOVERNMENT.

The principles on which American government and institutions are founded are proclaimed in the Declaration of Independence, in the propositions that all men are endowed with an unalienable right to life, liberty, and the pursuit of happiness, and that all just powers of government are derived from the consent of the governed. This is the basis of popular liberty, and even in monarchical governments, which in modern times have surrendered certain arbitrary powers, the right of the people to a large degree of self-government has been recognized, and it has been conceded that they may at their pleasure grant or withhold powers of government formerly exercised without their consent.

The government of the United States and the government of each state exists by virtue of the consent of the people. The people make the government; directly or indirectly they determine the powers of the government; they prescribe the machinery of government; they consent to be governed according to their own will, which is expressed in various ways, through elections, the press, petitions, remonstrances, public meetings, and other forms of discussion. They consent to be governed by rules prescribed, directly or indirectly, by themselves,

and declared either in a written constitution or in statutes. The methods are various.

For the protection of the people themselves, and for the purpose of imposing restraints on their official representatives, a written Constitution has been framed, setting forth certain principles of government; and by this instrument the people not only bind their official representatives, but they also bind themselves and proclaim themselves subject to the limitations, conditions, and prohibitions contained in the Constitution. They agree among themselves that the rules thus laid down in the Constitution shall bind them and their successors. In this way the people have set bounds to their own authority, and have imposed restraints upon their powers. The people determine the form of government under which they will live, and they have entered into a solemn compact with each other that the written Constitution which they have adopted shall be the standard by which all powers shall be measured, and by which the rights, duties, and privileges of the people shall be determined. This is what is meant by "the consent of the governed." This is "government of the people, by the people, and for the people."

THE NATION.

The United States is a republic. The people rule, but not in a direct way. The government is administered by officers chosen by the people. This makes the government republican in form. All government, whether in a republic or a monarchy, embraces three essential elements, namely, the legislative, the executive, and the judicial. Every organized government must have laws; the laws must be executed, and must be interpreted; so we have three departments of government, each separated quite

distinctly from the others. This division was derived from the English government during the colonial period, and was adopted and followed without essential change when the colonies became a nation,—the President, the Congress, and the Judiciary answering to the English King, the Parliament, and the Courts. This form of government was substantially reproduced in the English colonies in America, the King being represented by a governor, the Parliament by a colonial legislature, and the judiciary by local courts by which justice was administered in the several colonies.

The governor was the general executive officer in the colony, representing the English government so far as that government assumed to regulate colonial affairs; and he was also bound to execute the laws of the colony. In the early days the charters granted to various companies gave them large powers of government, but as population increased, and the interests of the colony became enlarged, demanding more supervision, a local legislature was established, usually called an assembly, sometimes a house of representatives. The members of this legislative body were chosen by the people, the right to vote being usually limited to owners or tenants of land. These elections were held by districts.

In addition to this legislative body chosen by the people, or by classes of the people, there was another legislative body composed of members of the governor's council, who in this way became also a part of the legislature, and took part in making the laws. The members of this council were not chosen by the people, but were usually appointed by the King, though sometimes temporarily by the colonial government. In its legislative capacity the council answered to the English House of Lords.

These colonial legislatures had power to make laws for the colony, provided such laws were not in conflict with

the laws of England; and these local laws had the same force and effect in the colony as if they had been made by the English Parliament.

Thus, each colony had a form of local government, and was substantially independent of any other colony, though the forms of government were usually quite similar. When the Revolution came and the nation was established, these independent local governments had been in existence many years,—in some colonies for a century or more,—and it was quite natural, therefore, that the forms of government with which the people were familiar should be continued after the states became wholly independent and free from English rule. So when the national government was formed, the chief executive officer was given the name of the President, the local legislative assembly became the national House of Representatives, and the governor's council, which was also sometimes a legislative council, became the Senate of the United States. A Supreme Court was created, and the Congress was given power to establish other courts.

I have said that the national government is republican in form. This is true, for the reason that the officers who administer the government are the representatives of the people; but it should be noted that members of the House of Representatives are the only officers chosen directly by the people. Senators are chosen by the state legislatures, which are chosen by the people of the several states. So, while a representative in Congress, commonly known as a member of Congress, is chosen by the qualified voters in a specified district, a Senator is one degree farther from the people, because he is chosen by the legislature of the state which he represents.

So, the President and Vice-President are not in form chosen by the people, though practically so in fact. The President and Vice-President are chosen by presidential

electors in each state, who compose what is known as the Electoral College. The people choose the Presidential electors, who are nominated by political parties acting through conventions. By long-established custom, candidates for these offices, and candidates for the office of presidential elector, are placed in nomination at the beginning of a presidential campaign, with the result that votes cast for presidential electors are deemed cast for the candidates of the same party for President and Vice-President.

The President and Vice-President, Senators and Representatives in Congress, are the only national officers who are, even in form, chosen by the people. All judicial officers, and all other executive or administrative officers, and also military and naval officers, are appointed, in some cases by the President, subject to confirmation by the Senate, in some cases by the President alone, and in some cases by heads of departments or other subordinate officers.

The President and Vice-President are chosen for terms of four years, Senators for six years, and Representatives in Congress for two years. Judicial officers usually serve during good behavior. Some other officers serve during good behavior, or until the expiration of a fixed time limit, or for a definite term.

An English Nation.

The colonies which by the Revolution of 1776 became the American Nation were for the most part settled by emigrants from Great Britain. New England and Virginia were almost entirely English; the same statement is substantially true of some other settlements. The Dutch in New York, the Germans in Pennsylvania, the French Huguenots in North Carolina, and representatives of other nationalities in several parts of the country, did not ma-

terially affect the general preponderance of English-speaking people; and at the time of the Revolution all the colonies which joined in forming the new nation were subject to the English government. The United States, therefore, became essentially another English nation, in which the English language was generally used, and by a custom, general if not universal, constitutions, laws, public documents, and records are required to be in the English language.

English is therefore the national language; and while it may not always be easy for older persons to learn to speak the language readily, the necessity of being able to speak it has been imposed by law upon a foreigner who wishes to be naturalized. The naturalization law of 1906 declares the general rule, subject to some exceptions, that an applicant for naturalization must be able to speak the English language. As a foreigner is required to live here five years before he can be naturalized, the law assumes that he will spend some part of this time in learning to speak the English language as a part of his preparation to become a citizen.

THE STATES.

The American Nation is composed of states united under one central government. Each state is in its local affairs independent of other states, and in most respects independent of the general government.

Each of the thirteen states from which the Union was formed was, prior to the Revolution of 1776, a colony or province under the dominion of the British government. Each colony had a local government partly dependent on the Crown, and partly independent. The boundaries of the colonies were reasonably well defined, and each colony was substantially an independent com-

munity. Colonies frequently treated with each other as if they were neighboring states, and they possessed, even in those early days, the general characteristics of states. It seems perfectly logical, therefore, that the framers of the Declaration of Independence should have asserted that the colonies, which united in the Declaration, "are, and of right ought to be, free and independent states," with all the rights, powers, duties, and obligations of independent states. Thus, on the adoption of the Declaration each state became independent, not only as against the English government, but as against all the other states. Each state was in effect a nation by itself.

For the purpose of achieving the independence which had been declared, some kind of a union of the states was necessary; for it was manifest that no colony which had suddenly become a state could alone maintain the contest for the independence which had been declared. So the colonies, having declared themselves to be states, formed a union, naming it "The United States of America," and adopted an instrument which was called the "Articles of Confederation." This instrument set forth the conditions on which the Union was formed, its purposes, its powers, and the relation of the states to each other.

The new states, like the former colonies, were jealous of their individual rights, and in the Articles it was expressly provided that "each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress Assembled." The association of the states was declared to be a "league of friendship" for their common defense, the states "binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever."

The Articles of Confederation are given at length in another part of this book (see *post,* 91), and should be consulted for the powers and limitations imposed on the states and on the Congress. For the most part the states reserved their independence, and it was manifest that the Articles did not create a nation in the sense in which we now understand that term. It was a union of independent states for a common purpose, but each state reserved so many powers to itself that there was little real authority in the central government, which acted through a congress of delegates from the several states. Each state was practically independent, with a government divided into the usual three departments,—legislative, executive, and judicial,—and maintained its own system of internal laws and policies. The right of naturalization was one of the rights which each state exercised for itself during those earlier years.

The Articles of Confederation have been called a "rope of sand." Each state could take part in the government for the time being, or decline to do so; and the powers of Congress could not be exercised except by the consent of the states. The Articles created a moral obligation, but lacked the essential powers which every real government should possess. The necessity of the situation compelled some sort of union, and the patriotism of the people was sufficient to keep even a weak government alive during the stress of the war and until the independence of the United States had been acknowledged by Great Britain, resulting in a treaty of peace concluded on the 3d of September, 1783.

The weakness of the union under the Articles of Confederation was admitted on all sides, and statesmen soon began to consider plans for the formation of a more perfect union and the establishment of a real nation. This discussion resulted in the preparation of the CONSTITU-

TION OF THE UNITED STATES, which was adopted in 1787 by a convention of delegates from the several states, of which George Washington was president. The Constitution was soon ratified by a sufficient number of states, and was put into operation, and a new government organized in 1789, George Washington having been inaugurated the first President of the United States on the 30th of April of that year.

A real government was organized, and the United States became a nation. The states surrendered to the Federal government all the powers needed for the maintenance of an independent nation and for the preservation of national life, and these powers have been asserted and maintained from time to time as emergencies have arisen. But the states still reserved a large measure of independence, and by the 10th Amendment to the Constitution, which was proposed in 1789, soon after the new government was organized, and which went into operation in 1791, it was expressly declared that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people." (See *post,* 155)

The nation has a Constitution of its own, and each state has a Constitution. The relation of the state Constitution to the Federal Constitution is declared in the provision in the latter that "the Constitution and laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

The national Constitution relates primarily to the government of the nation; but in some respects it relates to the government of the states, and limits or restrains some

of the powers which the states may exercise. Each state has its own Constitution, which is subordinate to the national Constitution on questions relating to national affairs and the exercise of Federal powers; but in general a state Constitution is independent and supreme. It provides the machinery for the government of the state, defines the powers and duties of the several departments of government, and is intended to regulate and control all local affairs. In these respects, and where not controlled by the Federal Constitution, each state is substantially an independent nation.

It should not be forgotten that the state governments are much older than the Federal government; older in colonial forms which preceded the state governments, and older in the exercise of their powers as states. All the thirteen original states had written Constitutions, and government was carried on under them in a regular manner, before the national Constitution was framed, except Rhode Island and Connecticut, whose governments were continued under early royal charters until some time subsequent to the adoption of the Federal Constitution. These state constitutions and charters continued to be the foundation of state governments after the national government was established, and the adoption of the Federal Constitution did not affect these states and their Constitutions or governments, except as state powers were surrendered to the Federal government for national purposes.

So far as the people are concerned generally, they look to the state governments for the control and protection of their affairs and the regulation of the common concerns of life. On the contrary, the scope of the national government, so far as the daily life of the people is concerned, is quite limited. The Postoffice Department is the only one which affects all the people in their common affairs;

every community has its postoffice and mail service, with postmasters, carriers, and other postal officials. No other department comes in contact with the people to the same extent and in the same visible manner. The people cannot, however, forget the Treasury Department, for they are constantly reminded of its existence by the money they use. The great majority of our citizens rarely see an official connected with this department, but, by reason of its supervision and management of the money system of the country, it makes itself felt in a peculiar manner in the daily life of the people. The old days of state money, or money authorized by the state, have practically passed away, and the nation asserts its presence and its power in all our transactions requiring the use of money. We acknowledge the supremacy of the nation when, as in many formal business transactions, we promise to pay the debt we assume in lawful money of the United States. Whether the money we have is in United States notes, gold certificates, silver certificates, national bank notes, or coins of various kinds, we receive and use it without question except to ascertain its apparent face value, and not thinking of its origin, knowing that all of it rests on the pledge and security of the national government. While the government raises revenue by internal taxes, by tariff duties, sales of public land, and by fees imposed for services performed by several administrative departments, these features of government are, for the most part, of limited application. They do not affect all the people, but only particular classes. We go about our daily business, and attend to the various concerns of life, scarcely realizing that there is a Federal government. Not so as to the state; we may not know the terms of its Constitution, nor be familiar with many of its statutes, but we live and work under its shield. We are in constant touch with state education, state charities and benev-

olences, religious organizations authorized by the state, state courts, state taxation in some form, either indirect or through municipalities, state enforcement of laws against crime, and the preservation of peace and good order; and in the long list of duties and obligations by which we assert the right to life, liberty, and the pursuit of happiness, we appreciate the great benefits derived from being members of the state whose protection and privileges we enjoy. We do not forget the nation, nor our obligations to it; we cherish its greatness and will defend its honor; but it is farther from us than the state, and it is not singular that as citizens we should remember that the state is the original source of all authority and protection, both in the nation itself and in the community in which we live.

State Governments.

The forms of government in the several states are quite similar. Each state has a governor and other executive and administrative officers, a legislature, and a judicial system. The governor is the chief executive officer; the legislature is the lawmaking power; and judges and courts are provided to consider questions of public interest, and also suits and controversies between citizens. The Constitution of the United States guarantees to each state a republican form of government, which means a representative government administered by officers chosen directly or indirectly by the people.

I have already pointed out that under the national Constitution the people vote directly for only one class of officers, namely, Representatives in Congress, though indirectly for Senators and for the President and Vice-President; but in the states the election of officers by the people is the rule, and their choice in any other way is the exception. Thus popular government prevails in the

states; that is, a government in which, for the most part, the people by their votes select the officers who shall administer their public affairs.

The length of time an officer may serve varies among different offices and among the states. It will not be practicable here to point out these differences, but it may be said that, as a general rule, terms of office are short, except of judicial officers; and as to these it is believed that a longer term ensures greater permanency in judicial administration.

The legislature possesses the lawmaking power, which is the highest power in the state. The people govern themselves by laws made by their own chosen representatives; and in a popular government all the people are presumed to consent to be governed in this manner. The power of the governor to veto laws, and the power possessed by the courts to declare laws unconstitutional, are usually a sufficient check on unwise or invalid legislation. A few state legislatures meet every year, but most of them only once in two years.

Municipal Government.

Government in a state is not all administered by the state itself, but in some states a considerable part of the government is delegated to municipalities, like counties, cities, towns, villages, school districts, and other divisions of the state. In many states these local subdivisions have governments which are themselves almost independent,—not independent of the state, but independent as against other smaller municipalities.

Counties.

In many states, county governments are important factors in public affairs. Counties, however, do not usually have the powers of government given to a city.

County officers are of a different class, and are chosen for a different purpose. There is no chief executive officer, like a mayor, but in some states there is a local legislative body which makes the laws for the county on certain specified subjects. In some states the county has its own system of taxation, education, police, highways, and charities.

There are many variations of county government in the several states, and the reader will need to consult the statutes of his particular state for regulations concerning the administration of county affairs, and the powers and obligations of the county in relation to the state government.

Cities.

Cities have charters which confer on them powers of government, and define the scope and limitations of the powers which may be exercised, and the manner of exercising these powers. The city has a mayor, who is its chief executive officer, and answers to the governor in state affairs. The city also has a legislative body, and local executive and judicial officers. It has the power to impose taxes, maintain schools, charities, streets and highways, public health, police, and various other features of public affairs. A city, acting within its charter, is a smaller state. A city is, nevertheless, an essential part of the state; for its people, while governing themselves in relation to various local affairs, are members of the state, take part in elections of state officers and in other state affairs, and occupy the same relation to the state as persons who do not live in a city.

Towns.

Speaking generally, the most common form of local government is that provided for in towns. Towns, or

townships, are the ordinary subdivisions of the state, and for the most part may be deemed the unit of local government. In the early colonial days in New England, the people usually expressed their will on public affairs at the town meeting. Questions of local administration and the election of officers were there decided by the inhabitants after full and free discussion and consideration. The town meeting in its best days was a substantial illustration of a democracy in local government. The people ruled by a majority of votes. As population increased and the scope of public business became enlarged, many questions were withdrawn from the consideration of the body of inhabitants, and committed to local officers, either individually or as members of town boards. The result is that the early democratic character of the town meeting has been seriously modified,—especially as to the ordinary details of local government; but many matters are still under the control of the inhabitants of the town, and on several subjects expenditures cannot be made by local officers except as authorized by a vote of the people.

Town governments vary in different states, but, in general, each town has officers who administer its affairs, regulate its local policies, determine the amount of local taxation, and the purposes for which taxes may be raised and the proceeds expended, including schools, police, highways, charities, public health, and other subjects. Towns are usually subordinate state agencies, created primarily for purposes of local government; and the state confers on them certain powers of local legislation and administration. In some cases they are practically independent, except as against the state; in others, they are part of a county system, and local administration is worked out by means of the county government and as a part of it.

Villages are usually parts of towns, with a special local government, sometimes including parts of two or more

towns; but the township government extends over the village, and its inhabitants take part in town affairs the same as if the village did not exist. Where there is a village government within a town, each division has its powers; and the village and town are parts of a county, whose government has dominion over both.

In addition to these complex local arrangements, school districts often include parts of two or more towns, and sometimes parts of two or more counties. A person who wishes to take an intelligent part in public affairs, and to perform the highest duties of a citizen, will find it necessary to become acquainted with the organization of these elements of municipal government. They often constitute wheels within wheels, all deriving their powers from the great source of authority,—the state.

Villages.

The village is an important municipal subdivision of the state. Village governments and city governments are quite similar. A village charter can easily be made a city charter, often by simply changing the names of certain officers. A village, like a city, possesses powers of local government, varying according to circumstances. Thus, a village has a chief executive officer, usually called a president. It also has local administrative officers, and a legislative body with substantially the powers conferred on similar bodies in cities. Quite often, especially in some states, there is very little difference between a city government and a village government; the larger villages sometimes have a greater population than the smaller cities, and their interests are equally as important. So far as administration is concerned, the difference is often more in name than in fact.

School Districts.

For purposes of education the state is usually divided into a number of small districts, conveniently arranged, with a school or schools in each, maintained at public expense, for the instruction of the children residing in the district. These school districts have local officers, who in most cases possess certain powers of government, including the power to employ teachers, raise taxes and maintain the school; and the people, either directly or acting through boards or other officers, control the purpose and amount of taxation in extraordinary cases, leaving to the local officers the power to maintain the schools in the ordinary way.

Thus, the American schools are public institutions maintained by the people in small districts. They not only receive support from local taxation, but are also aided by the state; and, in some parts of the country, grants of public land have been made for educational purposes, which have been the means of establishing a fund available for the maintenance of public schools, and which has relieved the people from burdensome taxation for these purposes.

SUFFRAGE.

The right to vote is the fundamental element in popular government; by the exercise of it a citizen may compel consideration of his opinions; without it, he cannot express his views in the most effectual manner. The "consent of the governed" is manifested through the ballot box. Members of society who can vote, and those only, possess real powers of government.

Suffrage is not universal. The people who organize popular government have, or at least exercise, the power

to determine who shall vote; and they have sought to confer the right on those who are deemed to be most competent to exercise it intelligently. It should not be forgotten that the elective franchise is not a right, but a privilege. The persons in control of a government at its organization determine the quality of the elective franchise, and prescribe the persons or classes of persons who may use it. From our earliest history, the right of suffrage has been limited.

In the colonial days, when the right to choose one branch of the legislature was conferred on the colonies, persons who might vote for representatives in the legislature were particularly described and their qualifications fixed. Usually they must have been freeholders, or at least tenants of real property. In some instances, voters must have been church members; but little by little the scope of the right of suffrage was enlarged, property qualifications were abrogated, and manhood suffrage was generally established. In some states the right has also been conferred on women for all purposes, and in other states the right has been conferred on women as to certain propositions relating to taxation, but not for the election of officers. In some states an alien may vote upon making a declaration of his intention to become a citizen, but in most states a foreigner cannot vote until he has been naturalized and has become a citizen in all respects.

In general, the elective franchise is a matter of state regulation. The constitutions and laws of the various states should be consulted for regulations relating to suffrage.

In this connection the 15th Amendment to the Federal Constitution should be noted, which provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state,

on account of race, color, or previous condition of servitude." (See *post,* 170.)

For the duty to exercise the right of suffrage, see ***post,*** **34.**

CITIZENSHIP.

It is presumed that a person who leaves his home in another country, and comes to the United States with a view of permanently residing here, not only hopes to improve his condition and prospects, but intends to become a citizen and assume and perform all the duties of citizenship which are imposed by the laws of the country. The process of becoming a citizen is called naturalization. This process is given in detail in the naturalization law of 1906, which appears in another part of this book. (See *post,* 177.) It need only be said here that at the time of his admission to citizenship a person must have been a resident of the United States continuously for five years, and for one year a resident of the state, territory, or district where the application is made. He must also show by the affidavits of two witnesses that he is a person of good moral character, and that "he is in every way qualified, in their opinion, to be admitted as a citizen of the United States."

Before the national Constitution was adopted, each state had the power to regulate naturalization; and the state laws of those earlier years show frequent instances of the admission of foreigners to citizenship, usually by name, and on compliance with certain requirements specified in the statute, among which was an oath of allegiance to the state. The person thus admitted to citizenship became a member of the state, was subject to its laws, and owed to it his allegiance. It was provided by the Articles

of Confederation that the "free inhabitants" of each state, paupers, vagabonds, and fugitives from justice excepted, should be entitled to "all the privileges and immunities of free citizens in the several states," with the right of "ingress and regress," and the privilege of trade and commerce. This gave state citizenship a national character for general purposes, but there was no national citizenship.

All the citizens of all the states were deemed to have taken part in making the national Constitution, and the preamble to that instrument recites that "we, the people of the United States," for the purposes specified, "do ordain and establish this Constitution for the United States of America." The original Constitution did not define the term "citizen," but the 14th Amendment, adopted in 1868, declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." This includes the two classes of citizens recognized in every nation, namely, citizens by birth and citizens by naturalization, and also recognized national citizenship and state citizenship.

The Constitution gives to Congress the exclusive power to enact naturalization laws. Acting on this authority, the Congress, early in our history, passed laws regulating the admission of foreigners to citizenship by the process of naturalization; and these laws have, with modifications, continued in force to the present time.

The latest naturalization act was passed on the 29th of June, 1906, and with a few exceptions took effect at the expiration of ninety days after its passage. It may be found in full in another part of this book. (See *post*, 177.) It seeks to persuade foreigners to take a more intelligent interest in the subject of citizenship by imposing two new requirements; namely, that an applicant must

be able to speak the English language, and that he must write his own name in making his declaration of intention to become a citizen, and in his petition for citizenship.

Anarchists Excluded.

The American people believe in the preservation of law and order in society by means of organized government sustained by the loyalty and intelligence of all good citizens. Those who oppose this principle are not welcome to the country, nor to citizenship.

The latest immigation law, which was passed February 20, 1907, taking effect July 1, 1907, excludes from admission into the United States "anarchists, or persons who believe in or advocate the overthrow, by force or violence, of the government of the United States, or of all government, or of all forms of law, or the assassination of public officials;" and the same act provides that "no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States, or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any territory or place subject to the jurisdiction thereof."

By the naturalization law of 1906 no such person can be naturalized or admitted to citizenship, and by the same law an applicant for citizenship must state in his declaration of intention to become a citizen, and in his petition for citizenship, that he is not an anarchist and is not a disbeliever in organized government.

Expatriation.

The American people believe that any person anywhere in the world has the right to change his residence, and remove to another country, and become a citizen thereof. The national Congress has declared this principle, and it is set forth in the following terms in section 1999 of the Revised Statutes of the United States (U. S. Comp. Stat. 1901, p. 1269):

"Whereas, the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed; therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation is declared inconsistent with the fundamental principles of the Republic."

Having admitted a foreigner to citizenship, the nation is logically bound to protect him in the same manner and to the same extent as if he were a native citizen. This policy is expressed in the next section of the Revised Statutes (2000), which provides that "all naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens."

But the naturalized citizen is under some obligations to the nation whose society he has sought and whose protec-

tion he has received. He is not entitled perpetually to absent himself from the country, and thereby enjoy the benefits and protection of American citizenship while neglecting to perform its duties. The act of Congress passed on the 2d of March, 1907, relating to expatriation, provides that an "American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state;" and also that "when a naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years; provided, however, that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe; and provided, also, that no American citizen shall be allowed to expatriate himself when this country is at war."

For the full text of the expatriation law, see *post,* 210.

Our Island Possessions—The Hawaiian Islands.

The Hawaiian Islands were annexed to the United States under a joint resolution of Congress adopted on the 7th of July, 1898, accepting the proposed transfer and cession of the islands by the government of the Republic of Hawaii. The islands thereupon became a part of the territory of the United States. By an act approved April 30, 1900 (31 Stat. at L. 141, chap. 339), Congress provided a form of government for the islands. The act contains, with many other things, the provision that "all persons who were citizens of the Republic of Hawaii on

August 12, 1898, are hereby declared to be citizens of the United States and citizens of the territory of Hawaii. And all citizens of the United States resident in the Hawaiian Islands, who were resident there on or since August 12, 1898, and all the citizens of the United States who shall hereafter reside in the territory of Hawaii for one year, shall be citizens of the territory of Hawaii."

Legal proceedings were required to be in the English language. Voters must be male citizens of the United States, residents of the territory one year, twenty-one years of age, and able to "speak, read, and write the English or Hawaiian language."

It will be seen that persons who were citizens of the Republic of Hawaii on the date named in the act, August 12, 1898, became citizens of the United States by virtue of the act, and did not need a formal naturalization. A similar result followed from the annexation of the Republic of Texas, in 1845. By the Constitution of Texas adopted under the authority of a resolution of Congress annexing the Republic, and which Constitution was ratified by Congress in December, 1845, every free male person who had attained the age of twenty-one years, and who was a citizen of the United States, or who was, at the time of the adoption of the state Constitution by the Congress of the United States, a citizen of the Republic of Texas, or who had then resided in the state six months, was declared to be a qualified voter. Here citizens of the Republic were placed on the same footing as citizens of the United States.

—Porto Rico.

Porto Rico was annexed to the United States by a treaty with Spain concluded December 10, 1898. A scheme of government for the island was enacted by

Congress on the 12th of April, 1900. The act declared that all inhabitants continuing to reside in Porto Rico, who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States. But they were not declared to be citizens of the United States.

—*Philippine Islands.*

The Philippine Islands were ceded by Spain to the United States by the same treaty. An act for the government of the islands, passed July 1, 1902, substantially repeated the provisions contained in the Porto Rico act as to citizens.

Citizens of Porto Rico and of the Philippine Islands, and residents of other outside possessions, may become citizens of the United States by the naturalization law of 1906 (34 Stat. at L. 606, chap. 3592), which provides (§30):

"All the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, or who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law."

It may be noted that the treaty of peace between the United States and Spain concluded December 10, 1898, by which Porto Rico and the Phillipine Islands were ceded to the United States, contained a provision allowing Spanish subjects to elect to preserve their allegiance to Spain; but the treaty provided that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." 30 Stat. at L. 1759. The foregoing statutes, providing for the government of the islands, contain the declaration of Congress on this subject.

RIGHTS PROTECTED BY CONSTITUTIONS.

Privileges and Immunities of Citizens.

The Articles of Confederation, under which the Federal government was carried on during the Revolutionary War and until the adoption of the National Constitution, provided that the "free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several states." This provision was continued in the Constitution which (article 4, section 2, clause 1) declares that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Then came the 14th Amendment, 1868, defining the term "citizen," and which sought to protect his rights from state interference by the provision that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Thus, three times in our history the privileges and immunities of citizens have been made a subject of consti-

tutional enactment. As construed by high judicial authority, the provision means only that citizens of other states shall have equal rights with the citizens of the state in which the right is claimed, and not that they shall have different or greater rights. Their persons and property must in all respects be equally subject to the law of the latter state; they must put themselves on the same footing as citizens of that state, and then they are entitled to like immunities. The Constitution does not guarantee them any greater privileges.

A citizen does not carry with him the peculiar privileges and immunities he may enjoy in the state from which he goes, but in the state of his new residence he is entitled to all the privileges and immunities enjoyed by citizens of that state. The reader will need to consult the Constitutions and laws of the several states for the privileges and immunities accorded to citizens thereof.

The 14th Amendment was primarily intended to protect the privileges and immunities secured to citizens of the United States, and especially to protect persons of African descent who had become citizens by operation of this amendment.

The rights, privileges, and immunities which citizens are entitled to enjoy under the national Constitution do not all belong to the same class. Many of them are general in their nature, and affect the people only in their collective capacity, as members of the nation or of a particular state. Some of them are political in the highest sense, as affecting the organization, powers, and duties of government; while others are chiefly social in their nature. Many of them are of a public character, and the individual citizen does not feel any special interest in them unless under peculiar circumstances, not often arising, he is more particularly affected than his neighbors. Thus, every citizen has a right to know that

only proper laws are enacted by Congress, that they are properly executed by the President and other executive officers, and that they are properly interpreted by the courts. This situation touches every citizen so far as he is affected by national affairs. So, every citizen has an interest, usually quite general, but sometimes special, in the exercise of powers conferred on different branches of government.

The following may be included among the subjects in which citizens have a general interest: Administration of justice, ambassadors, appointment and removal of officers, appropriations and expenditures of public funds, bankruptcy, census, commerce, copyrights, cruel and unusual punishments, District of Columbia, due process of law, equal protection of the laws, excessive bail, excessive fines, executive power, fugitives from justice, guaranty of republican form of government in each state, House of Representatives, impeachments, indictments in criminal cases, judiciary, keeping and bearing arms, legislative power of Congress, militia and regulations concerning military and naval operations, money, including coinage and currency, naturalization, new states, patents, Postoffice, President, presidential electors, public lands, reservation of powers not delegated to the United States nor prohibited to the state, reservation of rights not expressly enumerated in the Constitution, revenue, right of assembly, right to hold office, right of petition, right to vote, search warrants, Senate, slavery and involuntary servitude, standard of weights and measures, states not to exercise certain powers, states, public acts, records, and judicial proceedings of each state to receive full faith and credit in every other state, tariff, taxation, territories, titles of nobility, treaties, unreasonable searches and seizures, validity of the public debt, and Vice-President.

The Constitution guarantees to the citizen certain personal rights, privileges, and immunities, and protects him from the infringement of them either by the national government or by the state government. Some of these are also general, but questions relating to them usually arise in individual cases, where some particular citizen claims that his personal rights are injuriously affected. Among these personal matters may be included:—

Bill of Attainder.

This has been defined as "a legislative act which inflicts punishment without a judicial trial." Bills of attainder are prohibited by the Constitution, thus securing to the citizen the right to a trial in a proper court before he can be condemned and punished, or his property taken.

Compensation for Private Property Taken for Public Use.

Even the government cannot take the private property of the individual for public use without making him compensation therefor. This right of property is protected by the 5th Amendment, and also by state Constitutions which provide that private property shall not be taken for public use without just compensation.

Elective Franchise.

This is secured by the provision that members of the House of Representatives shall be chosen by electors who "shall have the qualifications requisite for electors of the most numerous branch of the state legislature," from which it follows that persons entitled to vote for members of the most numerous branch of the legislature are entitled to vote for Representatives in Congress. So, where presidential electors are chosen by the people, every citi-

zen qualified to vote by the laws of the state in which he resides may vote for Presidential elector. The right to vote is protected by the 15th Amendment, which provides that "the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

Ex Post Facto Law.

"An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence, by which less or different testimony is sufficient to convict than was then required." Every citizen has a right to be protected against an *ex post facto* law.

Freedom of Speech and of the Press.

This right is protected by the 1st Amendment, which prohibits Congress from making any law "abridging the freedom of speech or of the press." State Constitutions contain similar provisions.

Habeas Corpus.

The writ of habeas corpus, issued by a court to inquire into the cause of detention of a person who claims that he is unlawfully in prison, is one of the great writs —some think it the greatest writ—devised to secure and preserve the personal liberty of the citizen. The Constitution prohibits the suspension of the writ except when, "in cases of rebellion or invasion, the public safety may require it."

Impairing the Obligation of a Contract.

Every citizen has a right to assume that when he makes a contract with another citizen, with a municipality, or with a state, the contract, if not unlawful, shall continue in force according to its terms, undisturbed by any power whatever except the parties to the contract. The sacredness of a contract has been recognized by the national Constitution, which provides that no state shall pass any law "impairing the obligation of contracts." The courts have had frequent occasion to enforce this prohibition.

Quartering Troops.

The 3d Amendment provides that "no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."

Religious Freedom.

This is guaranteed by the 1st Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Constitutions of the states contain similar provisions intended to secure to the citizen entire freedom of conscience, and to guarantee to him the free exercise of religious profession and worship, without discrimination or preference; but this freedom does not justify acts of licentiousness or practices inconsistent with the peace and safety of the State.

Rights of Accused.

The personal liberty of the citizen is further guarded by the 6th Amendment, which provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state

and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense." The same rights are guaranteed by state Constitutions and Bills of Rights.

Trial by Jury.

This right is secured to the citizen by the original national Constitution and by the 7th Amendment, and also by the Constitutions and laws of the states.

Twice in Jeopardy.

This is a most important element of personal liberty, and is expressed in the provision in the 5th Amendment that no person shall be subject for the same offense to be twice put in jeopardy of life or limb. States seek to guard the liberty of the individual by the same prohibition. The rule is based on the principle that if a person has been tried for an alleged offense, and acquitted, he should not be subjected to another accusation for the same offense; also, if he has been convicted he should not be tried again unless a new trial is granted according to law.

Witness against Himself.

No citizen can be compelled to convict himself of an offense; the burden of proving him guilty must always rest on the government which makes the accusation. This principle is declared in the 5th Amendment, and also in the state Constitutions and Bills of Rights, in the provision that no person "shall be compelled in any criminal case to be a witness against himself."

DUTIES OF CITIZENS.

The relations of the citizen to the state and nation are not all on one side. The Constitutions and laws guarantee to the citizen numerous rights, privileges, and immunities which are necessary for his protection and to insure his personal liberty. He has privileges as a member of the nation, other privileges as a member of the state, and still other privileges as a member of the community where he lives. These are all secured to him, either by the national or the state Constitutions, or by local laws. He also enjoys numerous defined immunities which protect him from the exercise of unrestrained authority by those who may from time to time be chosen to represent the people in official positions. These immunities have been of slow growth, and have come to their present condition after many centuries of struggle against arbitrary power. These privileges and immunities, taken together, afford every citizen ample opportunity for the exercise of his individual aspirations, and are a tangible expression of his right to "life, liberty, and the pursuit of happiness," as proclaimed in the Declaration of Independence.

The citizen who enjoys all these privileges and immunities also owes corresponding duties to the nation, the state, the county, the town, the city, the village, or the school district of which he is a resident and where he exercises the ordinary functions of a citizen. His duties differ in degree according to circumstances, but in general they may be embraced under the following heads:

Voting.

The citizen who has the right to vote is a member of the governing body of the state and nation, differing in

this respect from those citizens who cannot vote, but who enjoy the same privileges and immunities. Voters constitute a separate body in the community, and at different periods have been divided into several classes. The classes now most generally recognized are: First, those voters who possess the general right to vote in the election of all officers and upon any questions which may be submitted to the people; second, those who, possessing the general right to vote, cannot vote on particular questions, especially those involving taxation, unless they are also taxpayers; and in this class of taxpaying voters are also placed, in some states, women, who may not be qualified to vote for officers, but who may as taxpayers vote on questions involving taxation. This limited right to vote on tax questions is based on the idea that those who may be required to pay the taxes ought to be permitted to decide questions which may result in taxation, and it therefore often happens that the number of actual voters on a tax question is quite small as compared with the whole number of citizens who may vote for officers.

The privilege of voting is a trust conferred on a limited number of citizens, varying in different states and in different communities according to specified qualifications; but whatever the qualifications, the citizens who possess this privilege are especially charged with the duty of carrying on the government by the election of officers and the establishment of policies deemed most conducive to the general welfare. About one fourth of the citizens possess the general right of suffrage; therefore those composing this one fourth must not only provide a government for themselves, but they are also responsible for the government which may be provided for the other three fourths who cannot vote, and are bound to furnish for them such laws and methods of administration as may be best calculated to promote their interests and conduce to the well-being of society.

The trust conferred upon a voter is similar to that conferred upon an officer, differing in the number who may be responsible for its execution, and sometimes in the manner of executing it. Thus, in some municipalities some expenditures involving taxation may be authorized by the local governing body, such as the common council, board of aldermen, board of trustees, or by other officers; while on other questions expenditures can only be authorized by the taxpaying voters. The character of the trust is practically the same in both cases; for whether the power is vested in the governing board or in the body of taxpayers, each in its way becomes responsible for the proper administration of the matter submitted to it. It is the duty of every citizen to try to execute the trust with which he may be charged; manifestly, therefore, it is the duty of every citizen to vote, and in this manner assist in the election of proper officers to represent him in the administration of public affairs, or aid in determining questions of taxation, or other questions of administration which are sometimes submitted to the whole body of voters.

Several attempts have been made to exclude from the right of suffrage persons who habitually, or for a specified time, refuse to vote. It is urged that they ought not to possess the privilege of voting if they are unwilling to use it. This movement shows how some persons regard the continued neglect to exercise the right to vote. It is claimed that no person who has the right to vote should be indifferent to his duty and his opportunity. The duty of voting is one of the imperative duties resting upon every citizen who appreciates the position he occupies under a republican form of government.

Military Service.

Every able-bodied man is a possible soldier. This na-

tion has adopted the general policy of requiring every able-bodied citizen of military age to be ready on demand to become a member of a military organization in actual service, and thus discharge, in that special manner, the obligation which every person owes to aid in preserving the government under which he lives. In many highly developed nations he has been required to receive some degree of military instruction to qualify him for possible national exigencies.

The national Constitution authorizes Congress to provide for calling forth the militia "to execute the laws of the Union, suppress insurrections, and repel invasions;" "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress."

Congress has passed several laws at different times for the organization, equipment, and discipline of the militia. The latest statute on this subject was passed January 21, 1903 (32 Stat. at L. 775, chap. 196, U. S. Comp. Stat. Supp. 1905, p. 222). By the terms of this act "the militia shall consist of every able-bodied male citizen of the respective states, territories, and the District of Columbia, and every able-bodied male of foreign birth who has declared his intention to become a citizen, who is more than eighteen and less than forty-five years of age; and shall be divided into two classes: The organized militia, to be known as the National Guard of the state, territory, or District of Columbia, or by such other designations as may be given them by the laws of the respective states or territories; and the remainder to be known as the reserve militia." The law exempts from military duty, for public reasons, several specified officers

and classes of officers, and other persons engaged in public service, besides persons who have religious scruples against bearing arms. But, in general, all citizens of military age, not specially exempted, are included in one of the two classes specified. No person is compelled to be enrolled in the organized militia, but if enrolled, and the organization to which he belongs is called into service, his refusal to comply with the order subjects him to trial and punishment by court-martial.

If the organized militia is not sufficient in a particular public exigency, the unorganized or reserve militia may be called out, and in this manner the government may reach able-bodied citizens not exempted from military service. During the Civil War, 1861-1865, the number of volunteers not being sufficient, the government ordered a draft from the class of citizens now included in the reserve militia. The persons drafted were thus compelled either to join the army themselves or furnish substitutes. This was an extreme application of the principle that every able-bodied citizen is bound to aid his country in time of need. Clearly, it is the duty of every citizen to render military service to the state or nation of which he is a member. He has no right to claim the benefits of citizenship and enjoy the protection which his country affords, without being ready at all times to render such aid as may be needed in time of public danger.

The foregoing act of Congress of 1903 contains numerous details relating to organization, equipment, instruction, and discipline of the militia. In addition to this act the Constitutions and laws of the several states should be consulted for local regulations relative to military service.

Official Service.

There can be no government without officers to ad-

minister it, and in a representative government, like ours, citizens must, in order to carry on government, accept public office and render official service. Office holders and persons occupying positions connected with the government constitute a large class. Thousands of persons are thus connected with the administration of public affairs in one way or another. It is no discredit to them to say that probably nearly all such persons in public positions have sought the places they occupy. The compensation attached to an official position is, in a large number of cases, a means of livelihood, and by operation of civil service rules many persons are appointed to positions which they are entitled to hold practically for life. Many public offices are sought, not only for the honor and opportunity connected with them, but also for the accompanying compensation. Perhaps it is not too much to say that persons who are thus candidates for office do not usually accept offices simply from a high sense of duty, but because they are honorable and agreeable as well as remunerative.

The duty of the citizen applies especially where he is called to perform public service under circumstances which require sacrifice on his part by devoting his time and energies to the office, instead of giving his whole attention to his private business, and where sacrifice even causes financial loss by depriving him of ordinary business opportunities while performing the duties of an official position. There are many official positions to which no compensation is attached. Here the citizen is expected to render gratuitous service, and the demand upon his patriotism goes to the extent of requiring the same zeal and devotion in the performance of his official duties as if he received ample compensation therefor.

The state claims the right to demand official service from every citizen, within proper limitations and under

reasonable conditions. The assertion of this principle has led to the enactment of laws which impose a penalty upon a citizen who refuses to accept an office to which he has been duly chosen. Happily there is seldom occasion to enforce this penalty; for, even where official service must be rendered without compensation, most men have patriotism sufficient to induce them to render the needed service to the state or to the community without reward or the expectation of reward, except that derived from the conscientious performance of an honorable public duty.

Jury Service.

The right of trial by jury has already been noted in considering the personal rights and privileges of a citizen.

A jury is usually composed of private citizens not otherwise connected with the administration of justice, and constitutes a body which is an essential element in our judicial system, in ordinary cases involving questions of fact. Every citizen who possesses the requisite qualifications is a possible juror, and therefore a possible member of a judicial tribunal organized to try ordinary questions of fact. In this way citizens become active participants in the administration of justice, for as members of the jury they are asked to decide questions of fact, and to determine the truth, not only in controversies between citizens, but in cases where a person is charged with the criminal violation of a law of the state. So it may happen that today a citizen may submit to a jury of his fellow citizens his controversy with another person or with the state, and that tomorrow the same citizen may himself be a member of a jury, and required to decide a like question between his neighbors.

The social and political value of the jury has not

always been appreciated. It is a distinctive means of education, not only in the administration of justice, but generally in public affairs. A jury drawn from different parts of the county or other municipality find opportunity for extending their acquaintance and becoming familiar with the methods of public business. Jurors are as essential in particular proceedings as the judge himself, and in the course of a series of trials at a term of court they find opportunities, not only for personal acquaintance with each other, for observing the jealous care with which the rights of the citizen are guarded through the forms of law, for studying the character of men who appear in various capacities in the course of a trial, but also for learning some of the various aspects of social, political, and commercial life incident to our complex civilization. Every juror who gives careful attention to what is going on returns from a term of court with a wider knowledge of men and of affairs, and a deeper appreciation of the meaning of citizenship under a free government.

Our laws prescribe the qualifications of jurors, and contain regulations for procuring their attendance at court. A person duly summoned as a juror, who fails to attend without a reasonable excuse, may be punished for such neglect. In this manner the state, acting through its judges, asserts its right to demand that every citizen shall perform the part assigned to him in the administration of justice. It is the plain duty of every citizen to perform jury service under the conditions prescribed by law, and thus sustain the judicial system, which he is entitled to use in his own behalf, in the assertion or defense of his private rights.

Contributions for the Support of Government.

If a flag is worth living under, it should be sustained

and defended to the last extremity by every citizen. Our government is entitled to our cordial support, not only by making a proper use of the right to vote, by rendering military service in times of national stress and danger, by performing official duties when called to the public service, by maintaining the dignity of the state in the proper administration of justice, but also by making financial contributions for the expenses incurred in carrying on the government. These contributions are usually made by the payment of taxes, but they are also made by the operation of revenue laws, and by various other methods of raising money for public purposes.

National revenues are raised by indirect processes, which only remotely affect the majority of citizens; but in state and municipal affairs the people have frequent occasion to feel the burden of taxation. The weight of local taxation is sometimes relieved by resorting to indirect methods of raising funds, such as imposing taxes on inheritances, on the sales of intoxicating liquors, on the transfers of certain property, and on particular kinds of business. The streams of tribute flowing into the treasury from these sources sometimes furnish funds sufficient for carrying on the government, and in this way direct taxation is either avoided, or greatly reduced.

The most serious burdens of taxation arise from municipal expenditures. These cover a wide range of subjects, including schools, charities, public buildings, lighting, water supply, drainage, public health, police, highways, streets, parks, and other public places, besides the compensation of officers and other incidental and extraordinary purposes. The administration of these various subjects touches the citizen at short range, for it is, or may be, under his own immediate observation. The expenditures may be authorized by his own vote, and he is thus in a measure responsible for them. Every citizen should free-

ly contribute for these purposes,—especially when taxes are reasonable and equitably assessed, and the proceeds are wisely expended. Organized society cannot be maintained without such expenditures, varying in degree according to circumstances.

The expenditures are directly or indirectly under the control of the citizens of the municipality, and are therefore, in form and often in fact, made with their consent. This is another instance of the "consent of the governed," which, according to the Declaration of Independence, is the source of all the powers of a just government. The privilege of giving the consent implies a corresponding duty to sustain all departments of the government so established.

Obedience to Law.

"Let every soul be subject unto the higher powers. For there is no power but of God; the powers that be are ordained of God." Thus wrote St. Paul to his Roman friends at the beginning of the Christian era. The great apostle was himself a free-born Roman citizen, and he was proud of his citizenship; at a critical juncture he claimed the benefit of its privileges and immunities, and that as a Roman citizen he was entitled to the protection of the Roman government against the exercise of arbitrary power by Roman officers whose intended treatment of him would have deprived him of his liberty, and perhaps of his life, without due process of law. The Saviour said, on an important occasion: "Render unto Cæsar the things that are Cæsar's; and unto God the things that are God's." St. Peter expressed the same idea in one of his letters when he said, "Fear God, honor the King;" that is, honor the government of the country in which you live.

We need not here argue about the divine right of kings; we in the United States have asserted the divine right of the people to rule themselves, and have proclaimed that right, not only in the Declaration of Independence, but in our Constitutions and laws. The foregoing admonitions from Holy Writ clearly teach that patriotism is a religious duty, which patriotism includes not only love of country, but loyalty to the government, respect for its institutions, and obedience to its laws.

It must be manifest to all careful observers that some persons come to the United States without a proper appreciation of the principles underlying free government, and acts of lawlessness here and there, from time to time, show that the term "liberty" is often misunderstood. There must be government; there must be order. But real liberty is regulated by law, and it is founded on the well-being of society. Even in a democracy, or under a republican form of government like ours, the people sometimes make mistakes in determining the best policies; and there may be failures in administering the laws and procuring the best results; but it may be safely asserted that in the main our laws are good enough for every citizen, native or naturalized.

The best citizens are those who are "above the law;" not beyond its reach, nor superior to its influence, but whose daily lives are such that they do not feel the operation of law in its ordinary sense. There are probably thousands of persons who know little or nothing of the penal code; its commandments, prohibitions, and penalties mean nothing to them, for they are above it. If all our citizens could live in such an atmosphere as this, there would be little need of penal laws, or police, or courts. St. Paul says that "rulers are not a terror to good works, but to the evil." "Do that which is good, and thou shalt have praise" of the power. The people are

the rulers, they are jealous of the institutions they have established and are trying to maintain. Every citizen's standing in the community, and the degree of respect which he enjoys among his neighbors, depend very largely upon his attitude toward the laws and institutions of the country.

There can be no higher duty of the citizen than obedience to the laws. Indeed, this comprehends all the duties which have been considered in this section, and all other related duties which have not been particularly mentioned. If a foreigner comes to us with a desire to improve his condition, with the intention of becoming one of our people, and of contributing to the welfare of the community by the addition of his own intelligence and virtue, and thus enjoy to the fullest extent the privileges and immunities accorded to every member of society, he may here find an ample field for the gratification of his aspirations; and he may illustrate by his own experience and possibilities what it means to be an American citizen.

THE GREAT DOCUMENTS.

One object of this book is to present to the foreigner intending to become a citizen the great documents which are the foundation of our institutions, and the charters which set forth the theory and plan of the American system of government. The principles underlying our form of government have already been considered, more or less fully, in the Introduction. The documents on which the discussion chiefly rests are given at length in the following pages, but it is believed that a brief reference to them here will be of interest to the reader.

Magna Charta.

First in the list belongs this ancient instrument which has so long been deemed the basis of English and American free institutions. A brief sketch of it is given in a preliminary note to the Charter, and little more need be said here concerning its origin. For a full description and the text of this document and also of the articles containing the demands made upon the King which were afterwards amplified and granted in the Charter itself see *post,* 52–82.

No one can fail to appreciate the ancient character of the instrument, when it is remembered that it was written only a century and a half after William of Normandy invaded England and achieved that great conquest which, according to Sir Francis Palgrave, established an Anglo-Norman dynasty, and gave to the world the British Empire. Every loyal and patriotic Englishman cherishes the Great Charter as a priceless heritage. Kings have

more than once yielded to the force of its principles, and it has for centuries been the foundation of English constitutional liberty. It expresses in unmistakable language the elements of freedom so conspicuously represented in our parliamentary system, which has come down to us, out of the dim past, from the recesses of ancient German forests, where the spirit of liberty was dominant and unconquerable. Many of its provisions were temporary, but they were vital to men of that time, and illustrate the peculiar customs which prevailed in England seven centuries ago. The reader can scarcely fail to be interested in a brief analysis of some of its articles, especially those which still continue in fact, if not in form, in the customs and institutions of today.

Article 1, among other things, guaranteed the freedom of the English Church. In America all churches are free, and religious liberty is guaranteed to every citizen.

Article 2 contained a broad grant of perpetual freedom to the English people.

Article 5 provided for the protection of minors whose property was in the hands of guardians. Similar principles prevail in modern law.

Article 7 guaranteed dower, and allowed a widow to remain in her husband's house forty days after his death. The same rules are found in modern statutes.

Article 9 protected the judgment debtor's land from seizure until his personal property was exhausted. This is the modern rule. By the same article a surety was not liable until the remedies against his principal had failed.

By article 13 municipalities are secured in their liberties and customs.

By article 17 the court of common pleas was to be held in a certain place, and not to follow the King's

court. Modern constitutions and laws provide for holding courts in a fixed place.

Article 18 provided for judicial tribunals in each county, with power to dispose of legal proceedings. This is the modern practice.

Article 19 required courts to continue in session until their business was completed. Similar regulations may be found in modern statutes.

By articles 20, 21, and 22 amerciaments (penalties) were required to be reasonable, according to the rank of the offender. A similar rule prevails in our modern constitutions, which prohibit excessive fines.

Article 26 declared a preference in favor of the King on any claim held by him against a decedent. Modern statutes also give a preference to claims held by the government.

Article 27 provided for the distribution of the personal estate of a decedent to his next of kin after the payment of his debts.

By article 31 the King could not take a freeman's wood without his consent. According to the modern rule, any private property may be taken for a public use, but only on rendering a just compensation therefor.

By article 35 weights and measures were to be uniform. Our national Constitution vests in Congress the power to fix the standard of weights and measures.

Article 39 contained the great declaration concerning freemen's rights. It is the most important article in the charter, for it contains a sure guaranty of personal liberty, and secures the protection of the citizen in the enjoyment of his privileges and immunities. It has been repeated and re-enacted in principle, if not in form, in modern constitutions and statutes. Its essential elements appear in the provision in the national Constitution that

no person shall be deprived of life, liberty, or property without due process of law. It is the opening section of the Constitution of New York, and is there stated in language very similar to the original, as follows: "No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

By article 40 justice was not to be sold, nor denied, nor delayed to anyone. Our courts are open to every suitor, and our constitutions and laws guarantee to every citizen a fair, free, and equal opportunity for the assertion of any right, or the redress of any grievance.

Article 41 guaranteed protection to foreign merchants doing business in England. Modern laws and treaties secure free commercial intercourse among the people of different nations.

Article 42 authorized Englishmen to travel abroad freely, except in time of war, but they could not abandon their allegiance. A similar rule is declared by the expatriation law, which appears in a subsequent part of this book (*post,* 210) except that the law recognizes the right of a citizen to transfer his allegiance to another government.

Article 45 was intended to insure competent persons for the public service. This was a rule which is expressed in modern times in various civil service laws and regulations.

Declaration of Independence.

No analysis of this great document is needed here. The reasons which made it necessary are clearly set forth in the instrument itself, and are given in detail in the eighteen grievances in which are described the oppressive

measures pursued by the British government against the American colonies, and which caused the Revolution.

For the full text of this document see *post,* 83.

Articles of Confederation.

Some features of this compact between the states are described in the Introduction and in notes to the Constitution. It was for the time being the Constitution under which the patriots achieved the actual independence which had been proclaimed in the great Declaration. Many provisions in the Articles were continued in the Constitution, which was enriched by the results of ten years of experience, during which state governments had been firmly established, the principles and also the practice of popular liberty had become familiar to all, leaders and people alike, and the men then responsible for the administration of public affairs were able from the materials at hand to form a "more perfect union." There is reason to think that in our day a study of the Articles of Confederation is sometimes neglected, but that instrument cannot be ignored by any student who wishes to understand the sources of our national government.

For the full text of this document see *post,* 91.

Constitution of The United States.

This is the final and the greatest living document here presented for the consideration of the foreign student. Its predecessors have passed into history. It is the fundamental law of a great nation, and it contains the outlines of the form of government and the essential principles on which that government is administered.

The high tribute which is due to the men who framed it clearly appears when we remember that, with the exception of the first ten Amendments, which are practically

a part of the original instrument, no amendments of principle have been needed for more than a century, except those made necessary by the emancipation of the slaves as a result of the Civil War. If slavery had not existed and had not been abolished, there would have been no occasion for these Amendments. The Constitution itself, in its original form, has been found sufficient for all national exigencies, and the powers conferred by it adequate for the enactment and enforcement of all laws needed in carrying on the government during our most marvelous history.

For the complete document with the notes upon it see *post,* 107.

Naturalization Law.

The latest naturalization law (1906) is included in the book, so that persons intending to become citizens may have an opportunity to study the regulations under which they are admitted to citizenship.

For the law in full see *post,* 177.

Expatriation Law.

This law is included in the book because of its relation to the general subject of citizenship, and because it expresses the national policy under which any citizen may renounce his allegiance to the government of the United States, and assume similar relations to any other government. The law also provides for the effect of the temporary abandonment of his adopted country by a naturalized citizen, and the consequence of his continued residence abroad for a prescribed period.

For the law in full see *post,* 210.

MAGNA CHARTA, 1215.

The Great Charter of English Liberties, which, for nearly seven centuries, has been the foundation of the free institutions we now enjoy, may appropriately be given the place of honor among historic documents intended to enable foreigners to acquire information concerning the principles which underlie and regulate the government of the United States. Many books have been written on Magna Charta, and it has been a fruitful source of speculation and discussion, and the occasion of the most profound study and research. It has engaged the attention of great jurists like Blackstone and Coke, and of statesmen, historians, and essayists almost without number. It possesses a fascinating interest which cannot fail to arouse the enthusiasm of every thoughtful student of political and social institutions. It is not my purpose to present here a history of Magna Charta, but it seems proper to refer to a few facts which may be of interest to the reader as a prelude to the document itself.

It is a matter of common knowledge that the Charter was granted by King John as the result of a long controversy between himself and the barons of England, involving royal encroachments on one side, and on the other numerous and comprehensive demands for a larger measure of popular liberty. While these demands were presented and enforced by the barons, they were sustained by the people themselves, and the barons were only the instruments or agents of the people in procuring the liberties guaranteed by the Charter. Without going into detail concerning the protracted negotiations between the King and the barons, it is sufficient to say here that soon after Easter, in the year 1215, the barons presented to the King their demands in the form of articles, to which they

required the King's assent. These Articles are given below, preceding the Charter. While they were in complete form, they were apparently intended only as a rough draft or as heads for a charter. The King rejected the Articles, and refused to accede to the demands made by the barons. The barons thereupon declared war, and marched upon London, arriving there May 24, 1215. Events hastened rapidly, and on the 5th of June, 1215, the King by appointment met the barons at Runnymede (council meadow), a large tract of meadow land between Staines and Windsor, and here, on the 15th, granted the Great Charter which had been prepared by the barons and was there presented to the King. It amplified and stated in more elaborate language the demands contained in the Articles. The Articles and the Charter are preserved in the British Museum in London.

It seems that several copies or drafts of the Charter were made at or about the time it was granted, and there appear to be some differences in these copies. The English Record Commission, which was charged, among other things, with the duty of examining early English documents and records, in the appendix to its report submitted to Parliament June 2, 1812, gives an interesting account of its researches in connection with the great charters of England, and it is there stated that a subcommission visited every place where it appeared that any of the ancient records were preserved. The commissioners say that they have published all the charters, and that the collection thus presented is as complete as the most careful examination could produce, and much more complete than any other which had then been published, not excepting Sir William Blackstone's collection, which the commissioners say was imperfect in several particulars. The commissioners express the opinion that the charter

found in Lincoln Cathedral is the most authentic. I quote from the report:

"In Lincoln Cathedral, an original of the Great Charter of Liberties, granted by King John, in the seventeenth year of his reign, is preserved in a perfect state. This Charter appears to be of superior authority to either of the two Charters of the same date, preserved in the British Museum. From the contemporary indorsement and the word *Lincolnia* on the folds of the Charter, this may be presumed to be the Charter transmitted by the hands of Hugh, the then Bishop of Lincoln, who is one of the Bishops named in the introductory clause; it is observable that several words and sentences are inserted in the body of this Charter, which, in both the Charters preserved in the British Museum, are added by way of notes for amendment, at the bottom of the Instrument."

Mr. Richard Thomson, an eminent English antiquary, who published an exhaustive work on Magna Charta in 1829 under the patronage of the Earl of Spencer, follows the Commission. On these authorities, including the opinion of the Record Commission, which is official, I am justified, I think, in using the Lincoln draft in this work, and have therefore adopted Mr. Thomson's translation of the Articles and of the Charter.

TRANSLATION OF THE ARTICLES OF THE GREAT CHARTER OF LIBERTIES, UNDER THE SEAL OF KING JOHN.

[The Roman numerals which are placed against each of the following articles divide them into forty-nine distinct heads, for the convenience of reference. The Arabic figures, which are also placed at the commencement of each article, refer to that chapter of King John's Great Charter in which the contents of every division are to be found. The same rule is also to be observed in the numbers of reference, from the Charter back to the original Articles.]

These are the particulars of what the Barons petition, and our Lord the King grants.

I. (2) After the death of an Ancestor, the Heir of full age shall have his inheritance by the ancient Relief, as expressed in the Charter.

II. (3) An Heir who is under age, and who is in guardianship, when he comes to age shall have his inheritance without Relief or Fine.

III. (4) The Keeper of an Heir's land shall take only reasonable issues, customs, and services, without destruction or waste of the men or goods; and if the Keeper of such land shall make destruction or waste, he shall be dismissed from that guardianship; (5) and the Keeper shall maintain the houses, parks, fish-ponds, mills, and other things which belong to the land, or to the rents thereof; (6) and that Heirs shall be married without disparagement, so that it be by the advice of them that are nearest of kin.

IV. (7) No Widow shall give any thing for her Dower or Marriage, after the decease of her husband: but she may remain within his house for forty days after

his death; and within that term they shall be assigned her, and she shall have in the same place her Dower, and her Marriage-portion, and her Inheritance.

V. (9) The King nor his Bailiffs shall not seize upon any land for debt while there are sufficient goods of the Debtor's; nor shall the Securities of a Debtor be distressed, so long as the principal Debtor be solvent: but if the principal Debtor fail in payment, the Securities, if they be willing, shall have the lands of the Debtor until they shall be repaid; unless the principal Debtor can show himself to be acquitted thereof from the Securities.

VI. (15) The King shall not grant to any of his Barons, that he shall take aid of his Free-men, unless it be for the redeeming of his own body, for the making of his eldest son a Knight, and once for marrying his eldest daughter; and this shall be done by a reasonable aid.

VII. (16) No one shall do more service for a Knight's-fee than that which is due from thence.

VIII. (17, 18) That Common Pleas shall not follow the Court of our Lord the King, but shall be assigned to any certain place; and that recognitions shall be taken in their same Counties in this manner: that the King shall send two Justiciaries four times in the year, who, with four Knights of the same County, elected by the people thereof, shall hold Assizes of Novel Disseisin, Morte d'Ancestre, and Last Presentation; nor shall any be summoned for this, unless they be Jurors, or of the two parties.

IX. (20) That a Free-man shall be amerced for a small fault according to the degree of the fault; and for a greater crime according to it's magnitude, saving to him his Contenement; a Villian also shall be amerced in the same manner, saving his Wainage; and a Merchant

in the same manner, saving his Merchandise; by the oath of faithful men of the neighborhood.

X. (22) That a Clerk shall be fined according to his Lay-fee in the manner aforesaid, and not according to his Ecclesiastical benefice.

XI. (23) No Town shall be amerced for the making of Bridges for river's banks, unless they shall of right have been anciently accustomed to do so.

XII. (35) That the Measure of Corn, Wine, the breadth of cloth, and other things be amended; and the same of Weights.

XIII. (19) That the Assizes of Novel Disseisin and Morte d'Ancestre be shortened, and made like to other Assizes.

XIV. (24) That no Sheriff shall, of himself, enter into Pleas belonging to the Crown, without the Crown's authority; (25) and that Counties and Hundreds shall be at the Ancient Ferme without increase, unless they be the Manors of our Lord the King.

XV. (26) If any who hold of the King shall die, although a Sheriff or other Officer of the King shall seize and register his goods by the view of lawful men, yet nothing shall be removed until it be fully known if he owed any thing, and his debts to our Lord the King shall be cleared; then, when the whole of the King's debts are paid, the remainder shall be given up to his executors, to do according to the will of the deceased; and if he should not owe any thing to the King, all the goods of the deceased shall be restored.

XVI. (27) If any Free-man shall die intestate, his goods shall be distributed by his nearest of kindred and his friends, and by the view of the Church.

XVII. (8) No Widow shall be obliged to marry while she is willing to live without an husband; so that she will give security that she will not marry without the

consent of the King, if she hold of the King, or that of the Lord of whom she does hold.

XVIII. (28) No Constable nor other Officer shall take corn or other goods, unless he shall presently render payment; or unless he can have respite by the will of the seller.

XIX. (29) No Constable can distrain any Knight to give money for Castle-guard, if he be willing to keep it in his own Person, or by any other true man, if he shall not be able to do so by any reasonable cause; and if the King shall have sent him into the Army, he shall be free from Castle-guard for that space of time.

XX. (30) No Sheriff nor Bailiff of the King nor any other, shall take horses or carts of any Free-man, for carriage, unless it be by his own will.

XXI. (31) Neither the King nor his Bailiffs shall take another man's timber for castles or for any other uses, unless it be by the will of him to whom the timber was belonging.

XXII. (23) The King shall not hold the lands of them that have been convicted of felony, more than one year and one day, and then he shall give them up to the Lord of the fee.

XXIII. (33) That all Wears for the time to come shall be destroyed in the Rivers of Thames and Medway, and throughout all England.

XXIV. (34) No Writ called *Precipe,* shall for the future be granted to any one of any tenement, whereby a Free-man may lose his cause.

XXV. (52) If any one have been dispossessed or deprived by the King without judgment of his lands, his liberties, or his rights, they shall immediately be restored; and if any contention should arise upon that subject, then shall it be decided by the judgment of twenty-five Barons; and that those who were disseised

by the Kings our Father or our Brother, shall have right without delay, according to the judgment of their Peers in the King's Courts; and if the King oweth any thing he shall have until the common term of the Crusaders, and then the Archbishop and Bishops shall cause justice to be done, and a certain day to be named for the debt being cleared.

XXVI. (36) Not any thing shall be given for a Writ of Inquisition of life or limb, but it shall be granted freely, without price, and not be denied.

XXVII. (37) If any hold of the King by Fee-farm, by Socage, or by Burgage, and of another by Knight's-service, our Lord the King shall not have the custody of the other's Knight's-Fee, by reason of the Socage or Burgage nor will We hold the custody of the Burgage, Socage, or Fee-farm;—and that a Free-man shall not loose his Knight's-fee by reason of Petit-Sergeantry, such as of them that hold another tenement by giving for it knives, arrows, or the like.

XXVIII. (38) No Bailiff can put any one to his Law upon his single accusation, without sufficient witnesses.

XXIX. (39) No Free-man's body shall be taken, nor imprisoned, nor disseised, nor outlawed, nor banished, nor in any ways be damaged, nor shall the King send him to prison by force, excepting by the judgment of his Peers and by the Law of the land.

XXX. (40) No right shall be sold, delayed, or denied.

XXXI. (41) That Merchants shall have safety to go and come, buy and sell, without any evil tolls, but by ancient and honest customs.

XXXII. (12) No Scutage nor aid shall be imposed on the Kingdom, excepting by the Common Council of the Kingdom; unless it be to redeem the King's body, to make his eldest son a Knight, and once to marry his

eldest daughter; and that to be a reasonable aid:—and in like manner shall it be concerning the *Taillage* and aids of the City of London; and of other Cities, which from this time shall have their liberties; and that the City of London shall fully have all its liberties and free customs, as well by water as by land.

XXXIII. (42) That it shall be lawful for any one to go out of the Kingdom and return again, saving his allegiance to our Lord the King, unless in time of war, by some short space for the common benefit of the Kingdom.

XXXIV. (10) If any one have borrowed any thing of the Jews, more or less, and shall die before they have cleared that debt, there shall be no interest paid for that debt so long as the Heir is under age, of whomsoever he may hold; and if the debt shall fall into the King's hands, the King shall take only the chattel which is contained in the Charter.

XXXV. (11) If any one die indebted to the Jews, his Wife shall have her Dower; and if he shall have left children, they shall have necessaries provided for them according to his tenement, and out of the residue the debt shall be paid, saving the service of the Lords. (5) In like manner shall it be with other debts, and that guardians of land shall give to the Heir when he shall come to full age, his land stocked according to what the same can reasonably bear, and the land shall require, with ploughs and carriages.

XXXVI. (43) If any man hold of us any Escheat, such as the Honour of Wallingford, Nottingham, Bologne, or Lancaster, or of any other Escheats which are in the King's hands and are Baronies, and dies, his Heir shall not give any other Relief nor do to the King any other service than he would do to the Baron; and that

the King shall hold it in the same manner as if the Baron held it.

XXXVII. (55) That Fines which are made for Dowers, the Marriages of Heirs, and unjust amerciaments against the Law of the land, shall be either entirely forgiven, or else left to be decided by the judgment of the twenty-five Barons, or by the decision of the greater part of them, with one Archbishop and others whom he shall be willing to call with him; but so, that if any one or any of the twenty-five shall be concerned in the cause, they shall be removed, and others be substituted in their places by the remainder of the twenty-five.

XXXVIII. (49) That the Hostages and engagements which were given to the King as security shall be delivered up.

XXXIX. (44) That they who dwell without the Forest shall not appear before the Justiciaries of the Forests upon a common summons, unless they are impleaded or are securities; (48) and that irregular customs of Forests and of Foresters, and Warrenners, and Sheriffs, and Keepers of Rivers, shall be amended by twelve Knights of the same Shire, who ought to be elected by true men of the same Shire.

XL. (50) That the King shall remove from his Bailiwicks the relations and all the followers of Gerard de Athyes, so that for the future they shall not hold a Bailiwick; they are namely, Engelard, Andrew, Peter, and Gyon de Chancell, Gyon de Cygony, Matthew de Martin, and his brother, and Walter, his nephew, and Philip Mark.

XLI. (51) That the King shall remove all Foreign Knights, Stipendiaries, Crossbowmen, Infringers, and Servitors who came with horses and arms to the injury of the kingdom.

XLII. (45) That the King shall make Justiciaries, Sheriffs, and Bailiffs of such as know the Law of the Land, and are disposed duly to observe it.

XLIII. (46) That Barons who have founded Abbies, and hold them by Charters from the King, or by ancient tenure, shall have the custody of them when they shall be vacant.

XLIV. (56) If the King have diseised or dispossessed the Welsh of lands or liberties, or other things in England or in Wales, they shall immediately, without plea, be restored; and if they were disseised or dispossessed of their English tenements by the King's father or brother, without judgment of their Peers, he shall, without delay, do them justice according to the manner of justice in England; for their English tenements according to the English Law, for their Welsh tenements according to the Law of Wales, and for tenements in the Marches according to the Law of the Marches; the same shall the Welsh do to the King and to his subjects.

XLV. (58) That the King shall give up the son of Llewellin; and moreover all the Hostages of Wales, and the engagements which they have entered into for the security of the peace.

XLVI. (59) That the King shall treat with the King of Scots, on the restoring of his Hostages, and his rights and liberties, according to the same form as he shall do with the Barons of England, unless it ought to be otherwise by the engagements which the King hath entered into, and this shall be decided by the judgment of the Archbishop, and others, whom he shall think proper to call with him.

XLVII. (47) And all Forests which have been afforested by the King in his time, shall be disforested,

and the same shall be done with rivers which have been fenced by the King himself.

XLVIII. (60) All the aforesaid customs and liberties which the King hath conceded are to be holden in the Kingdom, as much as belongs to him; therefore all his subjects of the realm, as well Ecclesiastics as Laity, shall observe them, inasmuch as they are concerned, from themselves towards their dependants.

XLIX. (61) This is the form of security for the observance of the peace and liberties between the King and the Kingdom. That the Barons may elect twenty-five Barons of the Kingdom, whom they will, who shall take care with all their might to hold and observe, and cause to be observed, the peace and liberties which our Lord the King hath conceded, and by his Charter hath confirmed; so that, namely, if the King or the Justiciaries or Bailiffs of the King, or any of his Ministers shall in any case fail in the performance of them towards any person, or shall break through these Articles of peace and security, and the offense be notified to four Barons of the aforesaid five and twenty, they, the four Barons, shall go to our Lord the King, or to his Justiciary, if the King shall be out of the Kingdom, and, laying open the grievance, shall petition to have it redressed without delay; and if the King shall not amend it, or his Justiciary shall not amend it for him, if the King shall be out of the Kingdom, within a reasonable time, determined upon in the aforesaid Charter,—the four Barons shall refer the case to the remainder of the twenty-five, and they, the twenty-five, with the whole community of the land, shall distrain and distress the King by all the means which they can; that is to say, by taking his Castles, Lands, Possessions, and in every other manner which they can, until amendment shall be made according to their decision, saving the persons of

the King and Queen and of their children, and when the grievance shall be redressed, they shall obey our Lord the King as before; and whosoever of the Kingdom is willing, may swear to obey the orders of the aforesaid five and twenty Barons, and harrass the King with them to the extent of his power, and the King shall give public and free leave to any to swear to them that are willing to swear; and he shall not prohibit any from swearing; also, all those of the land who of themselves and of their own accord will not swear to join with the five and twenty Barons, to distrain and distress the King, the King shall make them swear to the same such as is aforesaid, by his command. Also, if any of the aforesaid five and twenty Barons shall die or remove from the land, or by any other way be prevented from putting the things aforesaid into execution, the five and twenty may elect another in his place, by their own decision, who shall be sworn in a similar way with the rest. Also in all things that are committed to the charge of these five and twenty Barons, if, when they be all assembled, and between themselves they should disagree upon anything, or some of them when called cannot or will not come, whatever be agreed upon by the greater part, shall be as firm and valid as if all the five and twenty had given their consent; and the aforesaid five and twenty shall swear that all the aforesaid they will faithfully observe, and will cause to be observed, with their whole power. (63) Moreover, the King shall make them secure by the engagements of the Archbishops and Bishops, and of Master Pandulph, that he will not procure from our Lord the Pope any thing by which any part of this Covenant shall be revoked or lessened, and if any such thing be obtained, let it be considered as null and void.

MAGNA CHARTA,
OR
THE GREAT CHARTER OF KING JOHN,

GRANTED JUNE 15TH, A. D. 1215.
IN THE SEVENTEENTH YEAR OF HIS REIGN.

(Translated from the original, preserved in the archives of Lincoln Cathedral.)

[NOTE.—The original is not in paragraphs. For convenience of reference the charter is here presented in paragraphs, to each of which I have prefixed a title. C. Z. L.]

[Introduction.]—John, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his faithful subjects,—Greeting. Know ye, that We, in the presence of God, and for the salvation of our own soul, and of the souls of all our ancestors, and of our heirs, to the honour of God, and the exaltation of the Holy Church and amendment of our Kingdom, by the counsel of our venerable fathers, Stephen, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Joceline of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, and Benedict of Rochester, Bishops; Master Pandulph, our Lord the Pope's Subdeacon and familiar, Brother Almeric, Master of the Knights-Templars in England, and of these noble persons, William Mareschal, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William,

Earl of Arundel, Alan de Galloway, Constable of Scotland, Warin Fitz-Gerald, Hubert de Burgh, Seneschal of Poictou, Peter Fitz-Herbert, Hugh de Nevil, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip de Albiniac, Robert de Roppel, John Mareschal, John Fitz-Hugh, and others our liegemen; have, in the First place, granted to God, and by this present Charter, have confirmed, for us and our heirs forever:—

(I.) **[English church to be free.]**—That the English Church shall be free, and shall have her whole rights and her liberties inviolable; and we will this to be observed in such a manner, that it may appear from thence, that the freedom of elections, which was reputed most requisite to the English Church, which we granted, and by our Charter confirmed, and obtained the Confirmation of the same, from our Lord Pope Innocent the Third, before the rupture between us and our Barons, was of our own free will; which Charter we shall observe, and we will it to be observed with good faith, by our heirs forever.

(II.) **[Liberties granted.]**—We have also granted to all the Freemen of our Kingdom, for us and our heirs for ever, all the underwritten Liberties, to be enjoyed and held by them and by their heirs, from us and from our heirs.

(II.1) **[Relief of heirs under military service.]**—If any of our Earls or Barons, or others who hold of us in chief by military service, shall die, and at his death his heir shall be of full age, and shall owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an Earl, a whole Earl's Barony for one hundred pounds; the heir or heirs of a Baron for a whole Barony, by one hundred pounds; the heir or heirs of a Knight, for a whole Knight's Fee, by

one hundred shillings at most; and he who owes less shall give less, according to the ancient custom of fees.

(III.2) **[Relief for minors or wards.]**—But if the heir of any such be under age, and in wardship, when he comes to age he shall have his inheritance without relief and without fine.

(IV.3) **[Warden's duties over minor's lands regulated.]**—The warden of the land of such heir who shall be under age shall not take from the lands of the heir any but reasonable issues, and reasonable customs, and reasonable services, and that without destruction and waste of the men or goods; and if we commit the custody of any such lands to a Sheriff, or any other person who is bound to us for the issues of them, and he shall make destruction or waste upon the ward-lands, we will recover damages from him, and the lands shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we have assigned them. And if we shall give or sell to any one the custody of any such lands, and he shall make destruction or waste upon them, he shall lose the custody; and it shall be committed to two lawful and discreet men of that fee, who shall answer to us in like manner as it is said before.

(V.) **[Warden to maintain property.]**—But the warden, as long as he hath the custody of the lands, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things belonging to them, out of their issues; (35) and shall restore to the heir when he comes of full age, his whole estate, provided with ploughs and other implements of husbandry, according as the time of Wainage shall require, and the issues of the lands can reasonably afford.

(VI.3) **[Marriage of heirs.]**—Heirs shall be married without disparagement, so that before the marriage

be contracted, it shall be notified to the relations of the heir by consanguinity.

(VII.4.) **[Widow's dower.]**—A widow, after the death of her husband, shall immediately, and without difficulty, have her marriage and her inheritance; nor shall she give anything for her dower, or for her marriage, or for her inheritance, which her husband and she held at the day of his death; and she may remain in her husband's house forty days after his death, within which time her dower shall be assigned.

(VIII.17.) **[Widow's remarriage.]**—No widow shall be distrained to marry herself, while she is willing to live without a husband; but yet she shall give security that she will not marry herself without our consent, if she hold of us, or without the consent of the lord of whom she does hold, if she hold of another.

(IX.5) **[Debtor's privileges; surety's rights.]**—Neither we nor our Bailiffs will seize any land or rent for any debt, while the chattels of the debtor are sufficient for the payment of the debt; nor shall the sureties of the debtor be distrained, while the principal debtor is able to pay the debt; and if the principal debtor fail in payment of the debt, not having wherewith to discharge it, the sureties shall answer for the debt; and if they be willing, they shall have the lands and rents of the debtor, until satisfaction be made to them for the debt which they had before paid for him, unless the principal debtor can shew himself acquitted thereof against the said sureties.

(X.34) **[Debts to Jews.]**—If any one hath borrowed any thing from the Jews, more or less, and die before that debt be paid, the debt shall pay no interest so long as the heir shall be under age, of whomsoever he may hold; and if that debt shall fall into our hands,

we will not take any thing except the chattel contained in the bond.

(XI.35) **[Dowress preferred to Jewish creditor.]**—And if any one shall die indebted to the Jews, his wife shall have her dower and shall pay nothing of that debt; and if children of the deceased shall remain who are under age, necessaries shall be provided for them, according to the tenement which belonged to the deceased; and out of the residue the debt shall be paid, saving the rights of the lords (*of whom the lands are held*). In like manner let it be with debts owing to others than Jews.

(XII.32) **[Aids and scutages regulated.]**—No scutage nor aid shall be imposed in our kingdom, unless by the common council of our kingdom; excepting to redeem our person, to make our eldest son a knight, and once to marry our eldest daughter, and not for these, unless a reasonable aid shall be demanded.

(XIII.) **[Municipal liberties guaranteed.]**—In like manner let it be concerning the aids of the City of London. And the City of London should have all it's ancient liberties, and it's free customs, as well by land as by water. Furthermore, we will and grant that all other Cities, and Burghs, and Towns, and Ports, should have all their liberties and free customs.

(XIV.) **[Council for aids and scutages to be summoned.]**—And also to have the common council of the kingdom, to assess and aid, otherwise than in the three cases aforesaid; and for the assessing of scutages, we will cause to be summoned the Archbishops, Bishops, Abbotts, Earls, and great Barons, individually, by our letters. And besides, we will cause to be summoned in general by our Sheriffs and Bailiffs, all those who hold of us in chief, at a certain day, that is to say at the distance of forty days, (*before their meeting,*) at the

least, and to a certain place; and in all the letters of summons, we will express the cause of the summons; and the summons being thus made, the business shall proceed on the day appointed, according to the counsel of those who shall be present, although all who had been summoned have not come.

(XV.6) **[Aids from freemen regulated.]**—We will not give leave to any one, for the future, to take an aid of his own free-men, except for redeeming his own body, and for making his eldest son a knight, and for marrying once his eldest daughter; and not that unless it be a reasonable aid.

(XVI.7) **[Knight service regulated.]**—None shall be distrained to do more service for a Knight's-Fee, nor for any other free tenement, than what is due from thence.

(XVII.8) **[Common pleas not to follow King's court.]**—Common Pleas shall not follow our court, but shall be held in any certain place.

(XVIII.) **[Certain judicial proceedings regulated.]**—Trials upon the Writs of *Novel Disseisin,* of *Mort d'Ancestre* (death of the ancestor), and *Darrein Presentment* (last presentation), shall not be taken but in their proper counties, and in this manner: We, or our Chief Justiciary, if we are out of the kingdom, will send two Justiciaries into each county, four times in the year, who, with four knights of each county, chosen by the county, shall hold the aforesaid assizes, within the county, on the day, and at the place appointed.

(XIX.13) **[Assizes must hear all causes.]**—And if the aforesaid assizes cannot be taken on the day of the county-court, let as many knights and freeholders, of those who were present at the county-court, remain

behind, as shall be sufficient to do justice, according to the great or less importance of the business.

(XX.9) **[Amerciaments to be reasonable.]**—A free-man shall not be amerced for a small offense, but only according to the degree of the offence; and for a great delinquency, according to the magnitude of the delinquency, saving his contenement; a Merchant shall be amerced in the same manner, saving his merchandise, and a villain shall be amerced after the same manner, saving to him his Wainage, if he shall fall into our mercy; and none of the aforesaid amerciaments shall be assessed, but by the oath of honest men of the vicinage.

(XXI.) **[Amerciament of Barons and Earls.]**—Earls and Barons shall not be amerced but by their Peers, and that only according to the degree of their delinquency.

(XXII.10) **[Amerciament of clerks.]**—No Clerk shall be amerced for his lay-tenement, but according to the manner of the others as aforesaid, and not according to the quantity of his ecclesiastical benefice.

(XXIII.11) **[No distraint for new bridges or embankments.]**—Neither a town nor any person shall be distrained to build bridges or embankments, excepting those which anciently, and of right, are bound to do it.

(XXIV.14) **[Crown pleas not to be held by certain officers.]**—No Sheriff, Constable, Coroners, nor other of our Bailiffs, shall hold pleas of our crown.

(XXV.) **[Certain ancient rents preserved.]**—All Counties, and Hundreds, Trethings, and Wapentakes, shall be at the ancient rent, without any increase, excepting in our Demesne-manors.

(XXVI.15) **[Crown debts preferred against deceased holder of lay-fee.]**—If any one holding of us a lay-fee dies, and the Sheriff or our Bailiff shall show our

letters-patent of summons concerning the debt which the defunct owed to us, it shall be lawful for the Sheriff or our Bailiff to attach and register the chattels of the defunct found on that lay-fee, to the amount of that debt, by the view of lawful men, so that nothing shall be removed from thence until our debt be paid to us; and the rest shall be left to the executors to fulfil the will of the defunct; and if nothing be owing to us by him, all the chattels shall fall to the defunct, saving to his wife and children their reasonable shares.

(XXVII.16) **[Distribution of intestate freeman's estate.]**—If any free-man shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by the view of the Church, saving to every one the debts which the defunct owed.

(XXVIII.18) **[Taking personal property by certain officers regulated.]**—No Constable nor other Bailiff of ours shall take the corn or other goods of any one, without instantly paying money for them, unless he can obtain respite from the free will of the seller.

(XXIX.19) **[Castle-guard regulated.]**—No Constable (*Governor of a Castle*) shall distrain any Knight to give money for castle-guard, if he be willing to perform it in his own person, or by another able man, if he cannot perform it himself, for a reasonable cause; and if we have carried or sent him into the army, he shall be excused from castle-guard, according to the time that he shall be in the army by our command.

(XXX.20) **[Freeman's carts or horses not to be taken without his consent.]**—No Sheriff nor Bailiff of ours, nor any other person shall take the horses or carts of any free-man, for the purpose of carriage, without the consent of the said free-man.

(XXXI.21) **[Wood not to be taken without owner's consent.]**—Neither we, nor our Bailiff's, will take

another man's wood, for our castles or other uses, unless by the consent of him to whom the wood belongs.

(XXXII.22) **[Convicts' lands.]**—We will not retain the lands of those who have been convicted of felony, excepting for one year and one day, and then they shall be given up to the lord of the fee.

(XXXIII.23) **[Dams to be removed from navigable streams.]**—All kydells (*wears*) for the future shall be quite removed out of the Thames, and the Medway, and through all England, excepting upon the sea-coast.

(XXXIV.24) **[Præcipe against freemen regulated.]**—The writ which is called *Præcipe,* for the future shall not be granted to any one of any tenement, by which a free-man may lose his court.

(XXXV.12) **[Weights and measures to be uniform.]**—There shall be one measure of wine throughout all our kingdom, and one measure of ale, and one measure of corn; namely, the quarter of London; and one breadth of dyed cloth, and of russets, and of halberjects; namely, two ells within the lists. Also it shall be the same with weights as with measures.

(XXXVI.26) **[Inquisition of life or limb to be free.]**—Nothing shall be given or taken for the future for the Writ of Inquisition of life or limb; but it shall be given without charge, and not denied.

(XXXVII.27) **[Custody of certain heirs regulated.]**—If any hold of us by Fee-Farm, or Socage, or Burgage, and hold land of another by Military Service, we will not have the custody of the heir, nor of his lands, which are of the fee of another, on account of that Fee-Farm, or Socage, or Burgage; nor will we have the custody of the Fee-Farm, Socage, or Burgage, unless the Fee-Farm owe Military Service. We will not have the custody of the heir, nor of the lands of any one,

which he holds of another by Military Service, on account of any Petty-Sergeantry which he holds of us, by the service of giving us daggers, or arrows, or the like.

(XXXVIII.28) **[Defendant's rights.]**—No Bailiff, for the future, shall put any man to his law, upon his own simple affirmation, without credible witnesses produced for that purpose.

(XXXIX.29) **[Freemen's rights protected.]**—No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.

(XL.30) **[Right and justice freely and promptly given.]**—To none will we sell, to none will we deny, to none will we delay, right or justice.

(XLI.31) **[Foreign merchants protected.]**—All Merchants shall have safety and security in coming into England, and going out of England, and in staying and in travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war, and if they be of a country at war against us; and if such are found in our land at the beginning of a war, they shall be apprehended without injury of their bodies and goods, until it be known to us, or to our Chief Justiciary, how the Merchants of our country are treated who are found in the country at war against us; and if ours be in safety there, the others shall be in safety in our land.

(XLII.33) **[Free travel permitted.]**—It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of

the kingdom; excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and Merchants, who shall be treated as it is said above.

(XLIII.36) **[Duty of heirs of escheated lands.]**—If any hold of any escheat, as of the Honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which are in our land, and are Baronies, and shall die, his heirs shall not give any other relief, nor do any other service to us, than he should have done to the Baron, if that Barony had been in the hands of the Baron; and we will hold it in the same manner that the Baron held it.

(XLIV.39) **[Jurisdiction of forest courts limited.]**—Men who dwell without the forest, shall not come, for the future, before our Justiciaries of the Forest on a common summons; unless they be parties in a plea, or sureties for some person or persons who are attached for the Forest.

(XLV.42) **[Officers to be competent.]**—We will not make Justiciaries, Constables, Sheriffs, or Bailiffs, excepting of such as know the laws of the land, and are well disposed to observe them.

(XLVI.43) **[Custody of certain vacant abbies.]**—All Barons who have founded Abbies, which they hold by charters from the Kings of England, or by ancient tenure, shall have the custody of them when they become vacant, as they ought to have.

(XLVII.47) **[Certain forests and water-banks to be abandoned.]**—All Forests which have been made in our time, shall be immediately disforested; and it shall be done so with Water-banks which have been taken or fenced in by us during our reign.

(XLVIII.39) **[Inquiry concerning forests and water-banks.]**—All evil customs of Forests and War-

rens, and of Foresters and Warreners, Sheriffs and their officers, Water-banks and their keepers, shall immediately be inquired into by twelve Knights of the same county, upon oath, who shall be elected by good men of the same county; and within forty days after the inquisition is made, they shall be altogether destroyed by them, never to be restored; provided that this be notified to us before it be done, or to our Justiciary, if we be not in England.

(XLIX.38) **[Hostages and charters to be restored.]**—We will immediately restore all hostages and charters, which have been delivered to us by the English, in security of the peace and of their faithful service.

(L.40) **[Certain persons to be removed from their bailiwicks.]**—We will remove from their bailiwicks the relations of Gerard de Athyes, so that, for the future, they shall have no bailiwick in England; Engelard de Cygony, Andrew, Peter, and Gyone de Chancell, Gyone de Cygony, Geoffrey de Martin, and his brothers, Philip Mark, and his brothers, and Geoffrey, his nephew, and all their followers.

(LI.41) **[Certain knights and others to be removed out of the kingdom.]**—And immediately after the conclusion of the peace, we will remove out of the kingdom all foreign knights, cross-bowmen, and stipendiary soldiers, who have come with horses and arms to the molestation of the kingdom.

(LII.25) **[Restoration of certain estates.]**—If any have been disseised or dispossessed by us, without a legal verdict of their peers, of their lands, castles, liberties, or rights, we will immediately restore these things to them; and if any dispute shall arise on this head, then it shall be determined by the verdict of the twenty-five Barons, of whom mention is made below, for the

security of the peace. Concerning all those things of which any one hath been disseised or dispossessed, without the legal verdict of his peers by King Henry our father, or King Richard our brother, which we have in our hand, or others hold with our warrants, we shall have respite, until the common term of the Croisaders, excepting those concerning which a plea had been moved, or an inquisition taken, by our precept, before taking the Cross; but as soon as we shall return from our expedition, or if, by chance, we should not go upon our expedition, we will immediately do complete justice therein.

(LIII.) **[Provisions concerning certain forests, wardships, and abbies.]**—The same respite will we have, and the same justice shall be done, concerning the disforestation of the forests, or the forests which remain to be disforested, which Henry our father, or Richard our brother, have afforested; and *the same* concerning the wardship of lands which are in another's fee, but the wardship of which we have hitherto had, occasioned by any of our fees held by Military Service; and for Abbies founded in any other fee than our own, in which the Lord of the fee hath claimed a right; and when we shall have returned, or if we shall stay from our expedition, we shall immediately do complete justice in all these pleas.

(LIV.) **[Woman's right of appeal limited.]**—No man shall be apprehended or imprisoned on the appeal of a woman, for the death of any other man than her husband.

(LV.37) **[Unjust fines and amerciaments to be remitted.]**—All fines that have been made by us unjustly, or contrary to the laws of the land; and all amerciaments that have been imposed unjustly, or contrary to the laws of the land, shall be wholly remitted,

or ordered by the verdict of the twenty-five Barons, of whom mention is made below, for the security of the peace, or by the verdict of the greater part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he may think fit to bring with him; and if he cannot be present, the business shall proceed, notwithstanding, without him; but so, that if any one or more of the aforesaid twenty-five Barons have a similar plea, let them be removed from that particular trial, and others, elected and sworn by the residue of the same twenty-five, be substituted in their room, only for that trial.

(LVI.44) **[Welshmen's rights to be restored.]**—If we have disseised or dispossessed any Welshmen of their lands, or liberties, or other things, without a legal verdict of their peers, in England or in Wales, they shall be immediately restored to them; and if any dispute shall arise upon this head, then let it be determined in the Marches by the verdict of their peers; for a tenement of England, according to the law of England; for a tenement of Wales, according to the law of Wales; for a tenement of the Marches, according to the law of the Marches. The Welsh shall do the same to us and to our subjects.

(LVII.) **[Restoration of Welsh property taken by former Kings.]**—Also concerning those things of which any Welsh-man hath been disseised or dispossessed without the legal verdict of his peers, by King Henry our father, or King Richard our brother, which we have in our hand, or others hold with our warrant, we shall have respite, until the common term of the Croisaders, excepting for those concerning which a plea had been moved, or an inquisition made, by our precept, before our taking the Cross. But as soon as we shall return from our expedition, or if, by chance, we should not

go upon our expedition, we shall immediately do complete justice therein, according to the laws of Wales, and the parts aforesaid.

(LVIII.45) **[Certain hostages to be released.]**—We will immediately deliver up the son of Llewelin, and all the hostages of Wales, and release them from their engagements which were made with us, for the security of the peace.

(LIX.46) **[Scotch King's rights to be restored.]**—We shall do to Alexander, King of Scotland, concerning the restoration of his sisters and hostages, and his liberties and rights, according to the form in which we act to our other Barons of England, unless it ought to be otherwise by the charters which we have from his father William, the late King of Scotland; and this shall be by the verdict of his peers, in our court.

(LX.48) **[Customs and liberties, continued.]**—Also all these customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them.

(LXI.49) **[Twenty-five barons appointed to enforce charter.]**—But since we have granted all these things aforesaid, for God, and for the amendment of our kingdom, and for the better extinguishing the discord which has arisen between us and our Barons, we, being desirous that these things should possess entire and unshaken stability for ever, give and grant to them the security underwritten; namely, that the Barons may elect twenty-five Barons of the kingdom, whom they please, who shall, with their whole power, observe, keep, and cause to be observed, the peace and liberties which we have granted to them, and have confirmed by this our present charter, in this manner: that is to say, if we,

or our Justiciary, or our bailiffs, or any of our officers, shall have injured any one in anything, or shall have violated any article of the peace or security, and the injury shall have been shown to four of the aforesaid twenty-five Barons, the said four Barons shall come to us, or to our Justiciary if we be out of the kingdom, and making known to us the excess committed, petition that we cause that excess to be redressed without delay. And if we shall not have redressed the excess, or, if we have been out of the kingdom, our Justiciary shall not have redressed it within the term of forty days, computing from the time when it shall have been made known to us, or to our Justiciary if we have been out of the kingdom, the aforesaid four Barons shall lay that cause before the residue of the twenty-five Barons; and they, the twenty-five Barons, with the community of the whole land, shall distress and harass us by all the ways in which they are able; that is to say, by the taking of our castles, lands, and possessions, and by *any* other means in their power, until the excess shall have been redressed, according to their verdict; saving *harmless* our person, and *the persons* of our Queen and children; and when it hath been redressed, they shall behave to us as they have done before. And whoever of our land pleaseth may swear that he will obey the commands of the aforesaid twenty-five Barons, in accomplishing all the things aforesaid, and that with them he will harass us to the utmost of his power; and we publicly and freely give leave to every one to swear who is willing to swear; and we will never forbid any to swear. But all those of our land, who, of themselves, and of their own accord, are unwilling to swear to the twenty-five Barons, to distress and harass us *together* with them, we will compel them by our command, to swear as aforesaid. And if any one of the twenty-five Barons shall

die, or remove out of the land, or in any other way shall be prevented from executing the things above said, they who remain of the twenty-five Barons shall elect another in his place, according to their own pleasure, who shall be sworn in the same manner as the rest. In all those things which are appointed to be done by these twenty-five Barons, if it happen that all the twenty-five have been present, and have differed in their opinions about any thing, or if some of them who had been summoned, would not, or could not be present, that which the greater part of those who were present shall have provided and decreed shall be held as firm and as valid as if all the twenty-five had agreed in it; and the aforesaid twenty-five shall swear that they will faithfully observe, and, with all their power, cause to be observed, all the things mentioned above. And we will obtain nothing from any one, by ourselves, nor by another, by which any of these concessions and liberties may be revoked or diminished. And if any such thing shall have been obtained, let it be void and null; and we will never use it, neither by ourselves nor by another.

(LXII.) **[General amnesty.]**—And we have fully remitted and pardoned to all men, all the ill-will, rancour, and resentments which have arisen between us and our subjects, both clergy and laity, from the commencement of the discord. Moreover, we have fully remitted to all the clergy and laity, and as far as belongs to us, have fully pardoned all transgressions committed by occasion of the said discord, from Easter, in the sixteenth year of our reign, until the conclusion of the peace. (49) And, moreover, we have caused to be made to them testimonial letters-patent of the Lord Stephen, Archbishop of Canterbury, the Lord Henry, Archbishop of Dublin, and of the aforesaid Bishops, and of Master

Pandulph concerning this security, and the aforesaid concessions.

(LXIII.) **[Charter rights guaranteed forever.]**—Wherefore, our will is, and we firmly command that the Church of England be free, and that the men in our kingdom have and hold the aforesaid liberties, rights, and concessions, well and in peace, freely and quietly, fully and entirely, to them and their heirs, of us and our heirs, in all things and places, for ever as is aforesaid. It is also sworn, both on our part, and on that of the Barons, that all the aforesaid shall be observed in good faith, and without any evil intention. Witnessed by the above, and many others. Given by our hand in the Meadow which is called Runningmead, between Windsor and Staines, this 15th day of June, in the 17th year of our reign.

(SEAL.)

THE DECLARATION OF INDEPENDENCE, 1776.

[After several months spent in the consideration of various propositions relating to a settlement of the differences existing between the colonies and the British government, the Continental Congress, on the 4th of July, 1776, adopted the Declaration of Independence, and on the 18th of January, 1777, directed that an authenticated copy of it be transmitted to each state for record. It was ratified by the colonies, and became the basis of the subsequent Union of the States.]

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident,—that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a

long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature,—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State re-

maining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated

petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, *free and independent States;* that they are absolved from all allegiance to the British crown, and that all political connexion between them and the State of Great Britain, is and ought to be totally dissolved; and that, as *free and independent States,* they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which *independent States* may of right do. And for the support of this declaration, with a firm re-

liance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour.

JOHN HANCOCK.

GEORGIA.

Button Gwinnett.
Lyman Hall.
Geo. Walton.

NORTH CAROLINA.

Wm. Hooper.
Joseph Hewes.
John Penn.

SOUTH CAROLINA.

Edward Rutledge.
Thos. Heyward, junr.
Thomas Lynch, junr.
Arthur Middleton.

MARYLAND.

Samuel Chase.
Wm. Paca.
Thos. Stone.
Charles Carroll of Carrollton.

VIRGINIA.

George Wythe.
Richard Henry Lee.
Th. Jefferson.
Benjan. Harrison.
Thos. Nelson, Jr.
Francis Lightfoot Lee.
Carter Braxton.

PENNSYLVANIA.

Robt. Morris.
Benjamin Rush.
Benja. Franklin.
John Morton.
Geo. Clymer.
Jas. Smith.
Geo. Taylor.
James Wilson.
Geo. Ross.

DELAWARE.

Cæsar Rodney.
Geo. Read.
Tho. M'Kean.

NEW YORK.

Wm. Floyd.
Phil. Livingston.
Fran's Lewis.
Lewis Morris.

NEW JERSEY.

Richd. Stockton.
Jno. Witherspoon.
Fras. Hopkinson.
John Hart.
Abra. Clark.

NEW HAMPSHIRE.

Josiah Bartlett.
Wm. Whipple.
Matthew Thornton.

MASSACHUSETTS BAY.

Saml. Adams.
John Adams.
Robt. Treat Paine.
Elbridge Gerry.

RHODE ISLAND AND PROVIDENCE, &C.

Step. Hopkins.
William Ellery.

CONNECTICUT.

Roger Sherman.
Saml. Huntington.
Wm. Williams.
Oliver Wolcott.

ARTICLES OF CONFEDERATION, 1778.

On the 17th of November, 1777, the Continental Congress submitted to the several states proposed Articles of Confederation which had been adopted on the 15th, accompanied by an eloquent and impressive appeal to the legislatures to take immediate action. The Articles are described as "a plan of confederacy for securing the freedom, sovereignty, and independence of the United States." New York ratified the Articles on the 6th of February, 1778. On the 9th of July, 1778, the Articles were ratified by the delegates in Congress from New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, Pennsylvania, Virginia, and South Carolina. North Carolina had ratified the Articles, but that state and Georgia were not then represented in Congress. The delegates from New Jersey, Delaware, and Maryland had not then been authorized to sign the Articles. Maryland, which was the last state to act, ratified the Articles on the 30th of January, 1781, and the delegates from that state signed them on the 1st of March following. This completed the ratification.

The ratification by New York, in 1778, was subject to the approval of the Articles by all the other states; but on the 23d of October, 1779, a supplemental act was passed, dispensing with such unanimous approval so far as New York was concerned, and authorizing its delegates in Congress to join with the delegates from so many of the other states as might be judged "proper and competent for mutual defense and permanent security." It is a noteworthy fact that when the Articles were finally ratified by all the states, March 1, 1781, the Revolutionary War was nearly over. Corn-

wallis surrendered in October following, and there was little actual war after that time, although two years more elapsed before peace was finally consummated. The student of the Federal Constitution cannot fail to observe that many provisions in the Articles appear again in the Constitution, sometimes in substance, but often in the same language used here. While the Articles were conceded to be inadequate, the problem of uniting the states was an exceedingly difficult one, and it is a high tribute to the wisdom and patriotism of the statesmen of that period that they were able to maintain even the semblance of a government under such unfavorable conditions. The Articles appear to be dated July 9, 1778. This is the date on which a majority of the delegates signed them; but, as already pointed out, nearly three years elapsed before the ratification became complete. For the reader's convenience I have prefixed a title to each article.

ARTICLES OF CONFEDERATION, &c.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

We, the undersigned, Delegates of the States affixed to our names, send greeting:

WHEREAS The Delegates of the United States of America in Congress assembled did, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America, agree to certain articles of confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware,

Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, *viz.:*

Articles of Confederation and perpetual Union between the States of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Art. 1. [New nation named.]—The style of this confederacy shall be "The United States of America."

Art. 2. [State sovereignty reserved.]—Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

Art. 3. [Purpose of confederation.]—The said states hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon, them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Art. 4. [Privileges and immunities of citizens; fugitives from justice; judgments conclusive in other states.]—The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein

all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state to any other state, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the state from which he fled, be delivered up, and removed to the state having jurisdiction of his offense.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

Art. 5. [Congress, how constituted; privileges of members.]—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in Congress by less than two nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from and attendance on Congress, except for treason, felony, or breach of the peace.

Art. 6. [Treaties regulated; treaty imposts protected; state naval and military forces limited; militia; war by state regulated.]—No state, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties al-

ready proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled for the defense of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Art. 7. [Military officers, how appointed.]—When land forces are raised by any state for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

Art. 8. [Military expenses, how apportioned.]—All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled.

Art. 9. [Powers of Congress.]—The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances; provided, that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and

in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal, in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures; provided, that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint by joint consent commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges, who shall hear

the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear, or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings, being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;" provided also that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdiction as they may respect such lands and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before pre-

scribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the states; provided that the legislative right of any state within its own limits be not infringed or violated; establishing and regulating postoffices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "a committee of the states;" and to consist of one delegate from each state, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money

or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped, in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States or any

of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as, in their judgment, require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Art. 10. [Powers of recess committee.]—The committee of the states, or any nine of them, shall be authorized to execute in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled is requisite.

Art. 11. [Canada may join Union.]—Canada ac-

ceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states.

Art. 12. [Prior public debts secured.]—All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Art. 13. [Effect of articles; amendments.]—Every state shall abide by the determination of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress, to approve of and to authorize us to ratify the said articles of confederation and perpetual union: KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage

the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions which, by the said confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands, in Congress. Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part and behalf of the state of New-Hampshire.

Josiah Bartlett, John Wentworth, Jun., Aug. 8, 1778.

On the part and behalf of the state of Massachusetts Bay.

John Hancock, Francis Dana,
Samuel Adams, James Lovell,
Elbridge Gerry, Samuel Holten.

On the part and in behalf of the state of Rhode-Island and Providence Plantations.

William Ellery, John Collins.
Henry Marchant,

On the part and behalf of the state of Connecticut.

Roger Sherman, Titus Hosmer,
Samuel Huntington, Andrew Adams.
Oliver Wolcott,

On the part and behalf of the state of New-York.

Jas. Duane, Wm. Duer,
Fra. Lewis, Gouv. Morris.

On the part and in behalf of the state of New-Jersey.

Jno. Witherspoon, Nat. Scudder, Nov. 26, 1778.

On the part and behalf of the state of Pennsylvania.

Robt. Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Joseph Reed, 22d July, 1778.

On the part and behalf of the state of Delaware.

Tho. M'Kean, Feb. 13, 1779.
John Dickinson, May 5th, 1779.
Nicholas Van Dyke.

On the part and behalf of the state of Maryland.

John Hanson, March 1, 1781.
Nathaniel Carroll, do.

On the part and behalf of the state of Virginia.

Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee.

On the part and behalf of the state of North-Carolina.

John Penn, July 21st, 1778.
Corns. Harnett,
Jno. Williams.

On the part and behalf of the state of South-Carolina.

Henry Laurens,
William Henry Drayton,
Jno. Mathews,
Richard Hutson,
Thos. Heyward, Jun.

On the part and behalf of the state of Georgia.

Jno. Walton, 24th July, 1778.
Edwd. Telfair,
Edwd. Langworthy.

THE CONSTITUTION OF THE UNITED STATES, 1787.

The weakness of the Articles of Confederation was generally conceded almost from their inception; and it became evident, even before they were ratified, that they did not provide a bond of union sufficient for a new nation with such unexampled possibilities. As early as 1780 Alexander Hamilton advocated a convention of all the states for the purpose of reforming the evils of the existing government, and the subject became a matter of public discussion soon after the articles had been finally ratified.

The legislature of New York took up the subject in the summer of 1782; and on the 20th of July, the state senate passed an important series of resolutions relating to the "state of the Nation," reciting, among other things, that "in the opinion of this legislature, the radical source of most of our embarrassments is the want of sufficient power in Congress to effectuate that ready and perfect coöperation of the different states, on which their immediate safety and future happiness depends; that experience has demonstrated the Confederation to be defective in several essential points, particularly in not vesting the Federal government either with a power of providing revenue for itself, or with ascertained and productive funds, secured by a sanction so solemn and general as would inspire the fullest confidence in them, and make them a substantial basis of credit; that these defects ought to be, without loss of time, repaired, the powers of Congress extended, a solid security established for the payment of debts already incurred, and competent means provided for future credit, and for supplying the current demands of the war. That it

appears to this legislature that the foregoing important ends can never be attained by partial deliberations of the states, separately; but that it is essential to the common welfare that there should be, as soon as possible, a conference of the whole on the subject; and that it would be advisable for this purpose, to propose to Congress to recommend, and to each state to adopt, the measure of assembling a general convention of the states, especially authorized to revise and amend the Confederation, reserving a right to the respective legislatures to ratify their determinations."

The resolutions were concurred in the next day by the assembly, and on the 22d the governor was requested to transmit copies to Congress and to each state executive. New York was not alone in appreciating the defects of the Confederation, but I believe this was the earliest legislative action recommending a general convention to revise the form of government.

In January, 1786, Virginia initiated a movement for a convention of delegates from the several states to consider important questions relating to trade and commerce. New York joined in this movement, but a majority of the states did not, and the convention was therefore unable to accomplish its primary purpose. It reported the situation to Congress, expressing the opinion in substance that the Confederation was inefficient, and that it was necessary to devise "such farther provisions as shall render the same adequate to the exigencies of the Union," and recommending a convention to frame a new constitution. Congress concurred in this view, and on the 21st of February, 1787, adopted a resolution recommending a general convention "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein

as shall, when agreed to in Congress, and confirmed by the states, render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union," and fixed the second Monday of May as the day for holding the convention. The resolution thus adopted was presented by the delegates from Massachusetts, and the preamble referred particularly to the action of New York in reference to a convention.

The convention was organized in Philadelphia on the 25th of May, 1787, by the election of George Washington as president, and William Jackson as secretary. The convention adjourned on the 17th of September. It transmitted the constitution to Congress, with the recommendation that it be submitted to conventions chosen by the people in the several states, and that it be put in operation upon receiving the assent of nine states. Congress approved this action, and conventions were accordingly held for the purpose of considering the new constitution. It was ratified by the states in the following order: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America:

Note.—The character of the national government as distinguished from state governments has been pointed out in the Introduction. The manner in which the national government came into existence is specifically declared in the preamble, where it is said that the people of the United States "do ordain and establish this Constitution." The Constitution is therefore clearly the act of the people.

This subject was considered by Chief Justice Marshall in the case of *M'Culloch* v. *Maryland* (1819) 4 Wheat. 316, 4 L. ed. 579, in which the court unanimously sustained the act of Congress of the 10th of April, 1816, incorporating a national bank. In the course of his opinion the Chief Justice, referring to the action of the Continental Congress by which the proposed Constitution was to be submitted to conventions chosen by the people in the several states, said: "They acted upon it in the only manner in which they can act safely, effectively, and wisely on such a subject, by assembling in convention. . . . From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is 'ordained and established' in the name of the people;" for the purposes specified in the preamble. "The assent of the states, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. . . . The government of the Union, then, . . . is emphatically and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." The power to incorporate a national bank was held to be one of the incidental powers conferred by the people on the national government.

Chief Justice Taney in the *Dred Scott Case* (1857) 19 How. 393, 15 L. ed. 691, considering the status of a descendant of African negroes imported into this country as slaves, said: "Every person, and every class and description of persons, who were, at the time of the adoption of the Constitution, recognized as citizens in the several states, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges

guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several state communities, or who should afterwards by birthright or otherwise become members according to the provisions of the Constitution and the principles on which it was founded."

According to this decision, neither slaves, nor the descendants of slaves who had been emancipated, were counted as a part of the people by and for whom the Constitution was ordained and established. See the 14th Amendment and notes, *post,* 166.

The Constitution has been the subject of frequent consideration by the courts and by other public officers who have been obliged to apply it in the administration of the government. Plain as most of its provisions seem to be, many conditions have arisen which could not have been known to the men who made the Constitution, and the courts have had frequent occasion to determine whether it actually did apply to these new conditions. Officers of the government, in the absence of any other guide, exercise the right to determine what the Constitution means, and how it should be applied in a given case, but doubtful or disputed questions must be submitted to the courts, which have the final power to determine the meaning and application of the Constitution. Eminent judges have devoted their great talents to an examination of the Constitution for the purpose of ascertaining its proper meaning, and the applications of its provisions to various public affairs, and also to statutes which have been passed by Congress and by state legislatures. The judgment of the courts in these cases is conclusive within their proper sphere, and must control and regulate the action of public officers and of the people themselves.

No student can fail to appreciate the wisdom, the learning, and the extent of historical research displayed in many of the great opinions in which the principles of our form of government have been examined and explained by the courts. A few notes to the Constitution are here made, for the most part to provisions which may be supposed to possess a special interest to the reader who desires further information concerning the history of the instrument and

the policies intended to be established. There are hundreds of judicial decisions in which various provisions of the Constitution have been considered, but it is impracticable in a book of this kind to do more than suggest here and there a brief explanation of some of the more important parts of the instrument.

It will be observed that these notes contain many extracts from opinions written by some of our greatest judges who have studied the history and also the meaning of various provisions of the Constitution. In some cases, acts of Congress have been quoted or cited for the purpose of showing the manner in which the Constitution has been put into operation. It is hoped that these notes, though brief, will aid the reader in obtaining a more accurate view of the Constitution and of his own relations to our system of government.

ARTICLE I.

Section 1.

1. [Legislative power.]—All legislative powers, herein granted, shall be vested in a congress of the United States, which shall consist of a Senate and House of Representatives.

Note.—Legislative power is vested primarily in Congress, and cannot, in general, be delegated to any other authority. *Wayman* v. *Southard* (1825) 10 Wheat. 42, 6 L. ed. 262; *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R. Co.* (1896) 76 Fed. 183, Affirmed (1897) in 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896. But power to regulate administrative details may be delegated to officers who are charged with the duty of administration in particular cases. *United States* v. *Ormsbee* (1896) 74 Fed. 209.

Section 2.

1. [House of Representatives; qualification of electors.]—The House of Representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Note.—The right to vote for members of the House of Representatives is conferred by this section (*Wiley* v. *Sinkler* [1900] 179 U. S. 62, 45 L. ed. 88, 21 Sup. Ct. Rep. 17) and may be exercised by citizens of a state who are by its laws qualified to vote for the most numerous branch of the legislature (*United States* v. *Goldman* [1878] 3 Woods, 187,

Fed. Cas. No. 15,225). For an interesting exposition of the rule relating to the qualifications of voters, see *Ex parte Yarbrough* (1884) 110 U. S. 663, 28 L. ed. 279, 4 Sup. Ct. Rep. 152.

2. **[Qualifications of representative.]**—No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. **[Apportionment of representatives and taxes.]**—Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

NOTE.—The first Federal census was taken in 1790, the next year after the first meeting of Congress under the Con-

stitution; and a census has been regularly taken every tenth year since that time. Each census is made the basis of a new apportionment of members of the House of Representatives, which apportionment is to continue, and members are to be elected under it, until another apportionment is made, based on a new census.

In *Prigg* v. *Pennsylvania* (1842) 16 Pet. 539, 619, 10 L. ed. 1060, 1090, Mr. Justice Story said: "Although the Constitution has declared that representatives shall be apportioned among the states according to their respective Federal numbers, and for this purpose it has expressly authorized Congress by law to provide for an enumeration of the population every ten years, yet the power to apportion representatives after this enumeration is made is nowhere found among the express powers given to Congress, but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the Constitution."

The phrase "three fifths of all other persons," in this section, means slaves, and was one of the compromises of the Constitution, by which the inhabitants of slave states were able to count their slaves in apportioning members of the House of Representatives, as against free persons, including negroes, in other states where slavery did not exist. It will be observed that this rule was changed by the 14th Amendment, which directs that "representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." This new rule was a necessary consequence of the abolition of slavery, a sketch of which is given in a note to the 13th Amendment (*post* 161), and was also made necessary by the provision in the first part of the 14th Amendment, that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

Direct taxes. The framers of the Articles of Confederation (1778) sought to provide a method by which the expenses of the Revolutionary War and other public charges might be equitably apportioned among the states, and, by Article 8 of that instrument, declared that "all charges of war, and all other expenses that shall be incurred for the

common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled."

The application of this rule in actual practice gave rise to serious differences of opinion as to the description and valuation of property to be included. The quantity of land actually surveyed was always open to question and subject to frequent examination, often involving new surveys; and different views were necessarily entertained as to the valuation of buildings and other improvements. After some discussion, Congress on the 18th of April, 1783, amended the 8th Article by directing that charges against the states should be apportioned "according to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each state."

Here appears (I think for the first time) the basis of apportionment, not only of direct taxes, but of members of the House of Representatives, which was afterwards included in the foregoing section of the Constitution, including apprentices, and three fifths of the slaves, and excluding Indians not taxed. The framers of the Constitution manifestly borrowed this provision from the amended Articles of Confederation. After the amendment of the foregoing 8th article of the Articles of Confederation, Congress apportioned expenses among the states, and received contributions directly from the state treasuries.

There has been little occasion in our history for the application of the provision relative to direct taxes, chiefly for the reason that the national government has derived an income from the sale of public lands, from tariff and internal rev-

enue duties, from the postal service, and by other means usually sufficient to defray the expenses of the government, and sometimes in excess of the amount needed. This excess has, in a few instances, been distributed among the states, either directly or to reimburse the states for expenses incurred in aid of the national government in time of war.

Questions relating to direct taxes were considered by the Supreme Court of the United States in *Pollock* v. *Farmers' Loan & T. Co.* (1895) 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, involving the validity of the Federal income tax law of August 28, 1894; and it was there held that taxes on real estate and taxes on the rents and income of real estate are direct taxes, and that taxes on personal property, or the income of personal property, are also direct taxes; that consequently the statute, which imposed a tax on the income of real estate and personal property, was void, for the reason that, being a direct tax, it was not apportioned among the states according to population.

4. **[Vacancies.]**—When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. **[Powers of House; speaker and officers; impeachment.]**—The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3.

1. **[Senate.]**—The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. **[Classification; vacancies.]**—Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be,

into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. **[Qualifications of senator.]**—No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. **[President of the Senate.]**—The Vice-President of the United States shall be president of the Senate, but shall have no vote unless they be equally divided.

5. **[Officers of the Senate.]**—The Senate shall choose their other officers, and also a president *pro tempore,* in the absence of the Vice-President, or when he shall exercise the office of the President of the United States.

6. **[Trial of impeachments.]**—The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Note.—The English maxim that "the King can do no wrong" has no place in the American system of government. The Supreme Court in *Langford* v. *United States* (1879) 101 U. S. 341, 25 L. ed. 1010, considering the application

of this maxim, said: "We have no King to whom it can be applied. The President, in the exercise of the executive functions, bears a nearer resemblance to the limited monarch of the English government than any other branch of our government, and is the only individual to whom it could possibly have any relation. It cannot apply to him, because the Constitution admits that he may do wrong, and has provided, by the proceeding of impeachment, for his trial for wrongdoing, and his removal from office if found guilty. . . . It is to be observed that the English maxim does not declare that the government, or those who administer it, can do no wrong; for it is a part of the principle itself that wrong may be done by the governing power, for which the ministry, for the time being, is held responsible; and the ministers personally, like our President, may be impeached; or, if the wrong amounts to a crime, they may be indicted and tried at law for the offense. We do not understand that either in reference to the government of the United States, or of the several states, or of any of their officers, the English maxim has an existence in this country."

7. [Judgment in cases of impeachment.]—Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law

Section 4.

1. [Senators and representatives, how elections regulated.]—The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter

such regulations, except as to the places of choosing senators.

Note.—This provision should be read in connection with article 1., section 2, clause 1, which prescribes the qualifications of voters for representatives in Congress. The later provision delegates to the states the general power to regulate the election of senators and representatives. The two provisions illustrate the dual character of our system of government, some observations concerning which have been made in the Introduction. State suffrage is made the basis of national suffrage, but the state cannot restrict the right to vote for representatives unless it also restricts the right to vote for members of the most numerous branch of its legislature. Under our system of government the state furnishes the ordinary machinery of elections, and elections for representatives in Congress are conducted under state authority. This provision expressly delegates to the states the power to provide for the conduct of elections of senators and representatives; but the power is not exclusive, for the same provision reserves to Congress the right to interfere and prescribe regulations for the election of Federal officers, except as to the place of choosing senators.

This power of Congress was sustained by the Supreme Court in *Ex parte Siebold* (1879) 100 U. S. 371, 25 L. ed. 717, where it is said: "There is no declaration that the regulations shall be made either wholly by the state legislatures, or wholly by Congress. If Congress does not interfere, of course they may be made wholly by the state; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially. . . . It may either make the regulations, or it may alter them. If it only alters, leaving, as manifest convenience requires, the general organization of the polls to the state, there results a necessary co-operation of the two governments in regulating the subject." The court held that Congress had power to regulate the conduct of elections for representatives in Congress, and to make it a penal offense against the United States for any officer of an election, at an election held for a representative in Congress, to neglect to perform, or to violate, any duty in regard to such election, whether required

by a law of the state or of the United States. See also *Re Coy* (1888) 127 U. S. 731, 32 L. ed. 274, 8 Sup. Ct. Rep. 1263.

2. **[Annual session of Congress.]**—The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION 5.

1. **[General powers.]**—Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. **[Rules; punishment of members.]**—Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. **[Journals; yeas and nays.]**—Each house shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. **[Adjournments.]**—Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

1. **[Compensation; privileges.]**—The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

2. **[Members not to hold certain offices.]**—No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

1. **[Revenue bills.]**—All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. **[President's action on bills; repassage.]**—Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections, at

large, on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. **[Concurrent resolutions, President's approval.]**—Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8.

[Powers of Congress.]—The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

Note.—"These two classes, taxes so-called, and 'duties, imposts, and excises,' apparently embrace all forms of taxation contemplated by the Constitution. . . . There is no occasion to attempt to confine the words 'duties, imposts, and excises' to the limits of precise definition. We think that they were used comprehensively to cover customs and exise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like. Taxes of this sort have been repeatedly sustained by this court, and distinguished from direct taxes under the Constitution." *Thomas* v. *United States* (1904) 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305, sustaining the validity of the stamp tax on the transfer of corporate stock under the Federal war revenue act of 1898. See also *McCray* v. *United States* (1904) 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, sustaining the act of Congress of 1886, as amended in 1902, imposing a tax on oleomargarine under specified conditions.

2. To borrow money on the credit of the United States;

Note.—"The power to 'borrow money on the credit of the United States' is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stocks, bonds, bills, or notes. . . . Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bills, and may make them receivable in payment of debts to the government." *Legal Tender Case* (1884) 110 U. S. 444, 28 L. ed. 213, 4 Sup. Ct. Rep. 122.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Note.—The power of Congress to regulate commerce was considered by the Supreme Court in *Gibbons* v. *Ogden* (1824) 9 Wheat. 1, 6 L. ed. 23, where Chief Justice Marshall, among other things, said: "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercouse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. . . . All America understands, and has uniformly understood, the word 'commerce' to comprehend navigation. . . . The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it." The power is to regulate; that is, to prescribe the rule by which commerce is to be governed. This power applies not only to commerce with foreign nations, but among the several states and with the Indian tribes. See also *State Tonnage Tax Cases* (*Cox* v. *Lott*) (1870) 12 Wall. 214, 20 L. ed. 373.

Numerous questions relating to the exercise of this power by Congress have been considered by the courts, involving almost every conceivable aspect of the subject. The decisions maintain the power to its fullest extent, declare that Congress may prescribe the subjects on which the power is to act, and may prescribe detailed regulations concerning the application of the power, even if these regulations reach into an individual state and create new situations, or affect existing situations there. It is a very comprehensive power when applied within its proper sphere; namely, to commerce with foreign nations, or among the several states, or with Indian tribes.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

Note.—The power of naturalization is to confer citizenship, and not the power to take it away. *United States* v.

Wong Kim Ark (1898) 169 U. S. 703, 42 L. ed. 910, 18 Sup. Ct. Rep. 456. But see the expatriation law of 1907, which is given at length in a subsequent part of this book (*post,* 210), and which has created a presumption that a residence for a prescribed time and under specified conditions by a naturalized citizen in his native country, or in any other foreign country, shall be deemed an abandonment of his American citizenship.

As to the naturalization of Indians, see *Boyd* v. *Nebraska* (1892) 143 U. S. 162, 36 L. ed. 109, 12 Sup. Ct. Rep. 375, which contains several references to legislation and judicial decisions on this subject.

Bankruptcy. This power is plenary, and general in its application, and Congress possesses unrestricted authority over the entire subject. *Re Klein* (1843) 1 How. 277, note, 11 L. ed. 130, note; *Hanover Nat. Bank* v. *Moyses* (1902) 186 U. S. 187, 46 L. ed. 1119, 22 Sup. Ct. Rep. 857.

5. To coin money, regulate the value thereof, and of foreign coin; and fix the standard of weights and measures;

Note.—"Under the power to coin money and to regulate its value, Congress may (as it did with regard to gold by the act of June 28, 1834, chap. 95, and with regard to silver by the act of February 28, 1878, chap. 20) issue coins of the same denominations as those already current by law, but of less intrinsic value than those, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of the less real value. A contract to pay a certain sum in money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made." *Legal Tender Case* (1884) 110 U. S. 449, 28 L. ed. 215, 4 Sup. Ct. Rep. 122.

The provision relating to the power to coin money does not contain any implication that nothing but that which is the subject of coinage, nothing but the precious metals, can ever be declared by law to be money, or to have the uses of money. "So far from its containing a lurking prohibition, many have

thought it was intended to confer upon Congress that general power over the currency which has always been an acknowledged attribute of sovereignty in every other civilized nation than our own,—especially when considered in connection with the other clause, which denies to the states the power to coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts." By the Constitution "it was designed to provide the same currency having a uniform equal value in all the states. It was for this reason the power to coin money and regulate its value was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the states. The states can no longer declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in Congress." *Legal Tender Cases* (1870) 12 Wall. 457, 544, 20 L. ed. 287, 310, sustaining the legal tender acts, and declaring them valid both as to contracts made before they were passed, and also as to subsequent contracts.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish postoffices and postroads;

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

Note.—There is no common-law copyright; but, as it exists in the United States, it depends wholly on the legislation of Congress. *Banks* v. *Manchester* (1888) 128 U. S. 252, 32 L. ed. 428, 9 Sup. Ct. Rep. 36.

"The power of Congress to legislate upon the subject of patents is plenary by the terms of the Constitution, and, as there are no restraints on its exercise, there can be no limitation of their right to modify them at their pleasure, so that they do not take away the rights of property in existing patents." *McClurg* v. *Kingsland* (1843) 1 How. 206, 11 L. ed. 103.

9. To constitute tribunals inferior to the supreme court;

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

Note.—The power expressed in this section was considered in *Martin* v. *Mott* (1827) 12 Wheat. 29, 6 L. ed. 540, where Mr. Justice Story, speaking for the Supreme Court, said, among other things, that the power to "repel invasions includes the power to provide against the attempt and danger of invasion, as the necessary and proper means to effectuate the object. One of the best means to repel invasion is to provide the requisite force for action before the invader himself has reached the soil." Construing the act of 1795, which provided that "whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President of the United States to call forth such number of the militia of the state or states most convenient to the place of danger or scene of action as he may judge necessary to repel such invasion, and to issue his order for that purpose to such officer or officers of the militia as he shall think proper,"—the court said: "The authority to decide whether the exigency has arisen belongs exclusively to the President, and that his decision is conclusive upon all other persons."

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state, in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9.

1. **[Slave trade.]**—The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. **[Habeas corpus.]**—The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Note.—Sir William Blackstone, in his Commentaries on the English Law, calls the habeas corpus act of 31 Car. II. (1679) that "great bulwark of the English Constitution;" and he also speaks of it "as a second Magna Charta." It provided ample remedies for unlawful imprisonment, required a prompt inquiry into the cause of such imprisonment, and the discharge of a prisoner, or his release on bail if it was shown that he had been wrongfully deprived of his liberty. It is the highest writ available to the citizen, and its preservation is absolutely necessary for the protection of personal liberty.

The Constitution prohibits the suspension of the writ except in extraordinary emergencies. Such an emergency was deemed to exist during the Civil War, when, on the 3d of March, 1863, Congress passed an act, the first in our history, authorizing the President to suspend the writ in any part of the United States during the existence of the rebellion; but provision was made for continuing the use of the writ in states where the regular administration of justice had not been interrupted by the war. The act also provided for trials by military commissions, but still sought to protect the liberty of the person accused by authorizing him to apply for a writ of habeas corpus under prescribed and easy conditions, so that, even after action by a military commission, there might be a judicial injuiry into the cause of his detention.

President Lincoln issued a proclamation on the 15th of September, 1863 (13 Stat. at L. 734, appx.), suspending the writ throughout the United States in all cases "where, by the authority of the President of the United States, military, naval, and civil officers of the United States, or any of them, hold persons under their command or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers, soldiers, or seamen enrolled or drafted or mustered or enlisted in, or belonging to, the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or the rules and articles of war, or the rules or regulations prescribed for the military and naval services by authority of the President of the United States, or for resisting a draft, or for any other offense against the military or naval service." The suspension of

the writ was to continue during the existence of the rebellion, or until the proclamation should be revoked.

The object of the suspension is to authorize for the time being the imprisonment of persons, without giving any reason for so doing, and without legal cause or warrant, as a means of preserving the Republic from imminent danger. Congress has exclusive power to determine when a suspension of the writ is necessary or proper. *McCall* v. *McDowell* (1867) Deady, 233, Fed. Cas. No. 8,673.

3. **[Ex post facto law.]**—No bill of attainder or *ex post facto* law shall be passed.

Note.—A bill of attainder is a special act of the legislature which inflicts punishment without a judicial trial. If the punishment is less than death, the act is called a bill of pains and penalties. *Re Yung Sing Hee* (1888) 36 Fed. 437. It is elsewhere defined as " 'a legislative act which inflicts punislument without a judicial trial,' where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial, and fixes the punishment." *Re De Giacomo* (1874) 12 Blatchf. 391, Fed. Cas. No. 3,747.

An *ex post facto* law was thus defined by Mr. Justice Chase, in *Calder* v. *Bull* (1798) 3 Dall. 386, 1 L. ed. 648: "First. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action. Second. Every law that aggravates a crime, or makes it greater than it was when committed. Third. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. Fourth. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the offender."

The prohibition against *ex post facto* laws applies to a state constitution as well as to a statute. See *Kring* v. *Missouri* (1882) 107 U. S. 221, 27 L. ed. 506, 2 Sup. Ct. Rep. 443, where it was held that a provision in the Missouri Constitution of 1875, which in effect permitted a conviction for

murder in the first degree after the reversal of an erroneous judgment entered on a plea of guilty of murder in the second degree, was an *ex post facto* law as to the offense in that case, which was committed before the Constitution went into effect; and the court held that a law is *ex post facto* which is enacted after the offense is committed, and which, in relation to it or its consequences, alters the situation of the accused to his disadvantage.

4. **[Direct taxes.]**—No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. **[State exports.]**—No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

6. **[Appropriations; statement and account.]**—No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. **[Titles of nobility and presents from foreign state.]**—No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Section 10.

1. **[State not to exercise certain powers.]**—No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin

money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

Note.—The subject of laws impairing the obligation of contracts covers a wide field, and many questions have been submitted to the courts, in which statutes have been attacked as unconstitutional because they violated this provision. The prohibition in terms applies only to the states, and does not apply to the same extent to the United States, though in its spirit it is deemed applicable to legislation by Congress which is not expressly authorized by the Constitution. Each statute must be judged by itself. Judicial decisions under this clause are very numerous, and involve a great variety of questions. It need only be said here that the courts have quite rigidly sustained the policy of this provision, which seeks to protect from legislative interference contracts made by individuals with one another, or with municipal or other corporations, or with the state.

2. **[Congress may authorize exercise of certain powers by states.]**—No state shall, without the consent of the Congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II.

Section 1.

1. **[President and Vice-President.]**—The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Note.—The power of the President as the executive head of the nation was considered by Chief Justice Marshall in *Marbury* v. *Madison* (1803) 1 Cranch, 137, 165, 2 L. ed. 60, 69, in an elaborate opinion, from which the following observations are quoted:

"By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

"In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and, being entrusted to the Executive, the decision of the Executive is conclusive. . . . But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts,—he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

"The conclusion from this reasoning is that where the heads of departments are the political or confidential agents of the Executive, merely to execute the will of the President, or, rather, to act in cases in which the Executive possesses

a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy. . . .

"The power of nominating to the senate, and the power of appointing the person nominated, are political powers, to be exercised by the President according to his own discretion. When he has made an appointment, he has exercised his whole power, and his discretion has been completely applied to the case. If, by law, the officer be removable at the will of the President, then a new appointment may be immediately made."

The plaintiff had been appointed by the President as one of the justices of the peace of the county of Washington in the District of Columbia. His commission had been signed by the President, John Adams, and the great seal of the United States had been attached thereto. It was the duty of the Secretary of State to deliver the commission to the appointee, but it was not delivered. The court held that the appointment was complete, and that the plaintiff was entitled to a writ of mandamus against the Secretary of State, then James Madison, to compel the delivery of the commission, but that the Supreme Court had no power to issue such a writ.

2. **[Election.]**—Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. **[Election of President and Vice-President.]**—The electors shall meet in their respective states and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with

themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

4. **[Time of choosing electors.]**—The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. **[Qualifications of President.]**—No person, except a natural-born citizen, or a citizen of the United

States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. **[Vice-President to serve in case of vacancy.]**—In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly until the disability be removed, or a President shall be elected.

Note.—The statute now in force relative to the presidential succession was passed on the 19th of January, 1886, repealing provisions of the Revised Statutes on the same subject. In case of the death or removal of both the President and Vice-President, the law devolves the succession on cabinet officers in the following order: the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, and Secretary of the Interior; and the cabinet officer on whom the succession falls is required to act as President "until the disability of the President or Vice-President is removed, or a President shall be elected." The succession is, however, limited to cabinet officers whose appointment has been confirmed by the Senate, who are eligible to the office of President under the Constitution, and who are not under impeachment.

7. **[Compensation.]**—The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the

period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. **[Oath of Office.]**—Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2.

1. **[President's general powers.]**—The President shall be commander-in-chief of the Army and Navy of the United States, and the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. **[Treaties; nominations.]**—He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint, ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they

think proper in the President alone, in the courts of law, or in the heads of departments.

3. **[President to fill vacancies.]**—The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION 3.

1. **[President's general duties.]**—He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. **[Removal on impeachment.]**—The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1.

1. **[Judiciary; tenure; compensation.]**—The judicial power of the United States shall be vested in one

supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish.

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2.

1. **[Jurisdiction.]**—The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors or other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects.

2. **[Supreme Court.]**—In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. **[Jury trial regulated.]**—The trial of all crimes, except in cases of impeachment, shall be by jury; and

such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.

1. **[Treason.]**—Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Note.—The Constitution prescribes the only rule relative to treason. Congress cannot restrict, enlarge, or define it. *United States* v. *Greathouse* (1863) 4 Sawy. 457, Fed. Cas. No. 15,254.

Aliens resident in this country are bound to obey all the laws of the country, not immediately relating to citizenship, during their sojourn in it. They are equally amenable with citizens for any infraction of those laws. "All strangers are under the protection of the sovereign while they are within his territories, and owe a temporary allegiance in return for that protection." An alien, while domiciled in the country, owes a local and temporary allegiance which continues during the period of his residence. Daniel Webster, then Secretary of State, in a report, in 1851, on the status of alien residents, said: "Independently of a residence with intention to continue such residence,—independently of any domiciliation,—independently of the taking of any oath of allegiance,—it is well known that, by the public law, an alien or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be, unless his case is varied by some treaty stipulation."

The foregoing observations and many others on this subjest may be found in *Carlisle* v. *United States* (1872) 16

Wall. 147, 2 L. ed. 426, where it was held that "those aliens who, being domiciled in the country prior to the Rebellion, gave aid and comfort to the Rebellion, were therefore subject to be prosecuted for violation of the laws of the United States against treason, and for giving aid and comfort to the Rebellion," and were therefore included in the President's amnesty proclamation of December 25, 1868.

2. [Punishment of treason.]—The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Section 1.

1. [Faith and credit among states.]—Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof.

Section 2.

1. [Privileges and immunities of citizens.]—The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Note.—Judge Denio, of the New York court of appeals, in his opinion in the Lemmon Case (1860) 20 N. Y. 562, speaking of the privileges and immunities of citizens, said no provision in the Constitution had so strongly tended to constitute the citizens of the United States one people as this.

The term is to be confined "to those privileges and immunities [of citizens] which are, in their nature, funda-

mental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. . . . They may, however, be all comprehended under the following general heads: Protection by the government; enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through or to reside in any other state for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state,—may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise, as regulated and established by the laws or Constitution of the state in which it is to be exercised." *Corfield* v. *Coryell* (1823) 4 Wash. C. C. 371, Fed. Cas. No. 3,230.

For further observations on this subject see the Introduction (*ante,* 27) and also notes to the 14th Amendment (*post,* 166).

2. **[Fugitives from justice.]**—A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. **[Fugitives from labor.]**—No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such

service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

SECTION 3.

1. **[New states.]**—New states may be admitted by the Congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

2. **[Territories.]**—The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

1. **[Republican form of government; protection of states.]**—The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the Executive (when the legislature cannot be convened), against domestic violence.

Note.—Chief Justice Waite, in *Minor* v. *Happersett* (1874) 21 Wall. 162, 175, 22 L. ed. 627, 631, considering the guaranty of a republican form of government, said: "No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was in-

tended. The guaranty necessarily implies a duty on the part of the states themselves to provide such a government. All the states had governments when the Constitution was adopted. In all, the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the states to provide. Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution."

ARTICLE V.

1. **[Amendments.]**—The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Note.—The President's veto power does not apply to a proposition to amend the Constitution. He has nothing to do with constitutional amendments. *Hollingsworth* v. *Virginia* (1798) 3 Dall. 378, 1 L. ed. 644.

ARTICLE VI.

1. **[Debts under the confederation.]**—All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States, under this Constitution, as under the confederation.

2. **[Supreme law.]**—This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

Note.—"The United States is a government with authority extending over the whole territory of the Union, acting upon the states and upon the people of the states. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No state government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it for a moment the cognizance of any subject which that instrument has committed to it." *Tennessee* v. *Davis* (1879) 100 U. S. 263, 25 L. ed. 650.

3. **[Oath of office; no religious test.]**—The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. **[Ratification.]**—The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

Wm. Saml. Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

Wil. Livingston,
David Brearley,
Wm. Paterson,
Jona. Dayton.

PENNSYLVANIA.

B. Franklin,
Thomas Mifflin,
Robt. Morris,
Geo. Clymer,
Thos. Fitzsimmons,
Jared Ingersol,
James Wilson,
Gouv. Morris.

DELAWARE.

Geo. Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Basset,
Jaco. Broom.

MARYLAND.

James McHenry,
Dan. of St. Thos. Jenifer,
Danl. Carroll.

VIRGINIA.

John Blair,
James Madison, Jr.

NORTH CAROLINA.

Wm. Blount,
Rich'd Dobbs Spaight,
Hu. Williamson.

SOUTH CAROLINA.

J. Rutledge,
Chas. Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO FEDERAL CONSTITUTION.

There were wide differences of opinion concerning the new Constitution, and in many quarters its adoption was vigorously opposed. Several states ratified it with the express understanding that amendments should be immediately proposed by Congress to cure defects and supply omissions which were deemed vital to the success of the new government about to be established. In many cases the conventions proposed specific amendments, and instructed the representatives from such states in Congress to endeavor to procure their submission to the states for their consideration. So many states joined in this movement that its success, so far as Congress was concerned, was practically assured. The first Congress assembled on the 4th of March, 1789, and soon afterwards began the consideration of propositions to amend the Constitution. The subject was considered with great care, not only as to the substance of the amendments, but also as to their form and language. The result was a series of amendments, constituting, in substance, a national Bill of Rights, and which will long stand as models of constitutional expression.

On the 25th of September, 1789, Congress passed a resolution requesting the President to submit to the executives of the several states twelve amendments to the Constitution. All were ratified except two; one of these provided that "after the first enumeration, required by the first article of the Constitution,

there shall be one representative for every 30,000, until the number shall amount to 100; after which, the proportion shall be so regulated by Congress that there shall be not less than 100 representatives, nor less than one representative for every 40,000 persons, until the number of representatives shall amount to 200; after which, the proportion shall be so regulated by Congress that there shall not be less than 200 representatives, nor more than one representative for every 50,000 persons;" and the other, that "no law varying the compensation for the services of the senators and representatives shall take effect until an election of representatives shall have intervened."

February 27, 1790, the New York legislature ratified eleven of the amendments, including the first, relative to apportionment in the House of Representatives, but rejected the second, relating to the compensation of members of Congress. Virginia ratified the amendments on the 15th of December, 1791. This was the eleventh state, and made the three fourths required by the Constitution. The ratification was therefore complete, and the ten amendments were in effect from that date.

The following is the resolution proposing these amendments:

CONGRESS OF THE UNITED STATES.

Begun and held at the city of New York on Wednesday, the 4th of March, 1789.

The convention of a number of states having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and, as extending the ground

of public confidence in the government, will best insure the beneficent ends of its institution:

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states as amendments to the Constitution of the United States; all or any of which articles, when ratified by three fourths of the said legislatures, to be valid to all intents and purposes, as part of the said Constitution, namely:

ARTICLE I.

1. **[Religious toleration; speech and press to be free; right of petition.]**—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Note.—The prohibition against the establishment of a religion applies only to Congress, and does not affect the power of the states on this subject. Religious liberty in general, as enjoyed by the people of the states, is not protected by the national Constitution. Religious toleration is a matter of state regulation; but under the foregoing prohibition Congress can make no law prohibiting the free exercise of religion. See *Permoli* v. *New Orleans* (1845) 3 How. 609, 11 L. ed. 748, in which it was held that the Supreme Court had no jurisdiction to consider the validity of an ordinance adopted by Municipality No. 1 in the city of New Orleans, regulating the use of Catholic churches for funerals, and requiring funeral services to be held at the "obituary chapel situated in Rampart street." The court said the question was exclusively one of state cognizance.

State Constitutions and laws should be consulted for provisions relating to religious liberty.

Considering the scope and purpose of the foregoing prohibition, the Supreme Court in *Davis* v. *Beason* (1890) 133 U. S. 342, 33 L. ed. 640, 10 Sup. Ct. Rep. 299, said: "The 1st Amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they imposed as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted, by the governments of Europe for many ages, to compel parties to conform in their religious beliefs and modes of worship to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the Amendment in question. It was never intended or supposed that the Amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society."

The provision securing the freedom of speech and of the press does not apply to aliens who are excluded from the country because they are anarchists. Congress has power to provide for such exclusion, and to deport persons found in the country contrary to the provisions of the immigration laws. An alien does not become one of the people to whom the constitutional guaranties are applicable, by an attempt to enter the country if forbidden by law. *United States ex rel. Turner* v. *Williams* (1904) 194 U. S. 292, 48 L. ed. 985, 24 Sup. Ct. Rep. 719.

Discussions in Congress by members of that body are protected under the provisions relating to freedom of speech. *Kilbourn* v. *Thompson* (1880) 103 U. S. 204, 26 L. ed. 392.

ARTICLE II.

1. **[People may keep arms.]**—A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

1. **[Quartering of soldiers limited.]**—No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

1. **[Unreasonable searches and seizures.]**—The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Note.—The provision against unreasonable searches and seizures is violated by the compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property. *Boyd* v. *United States* (1886) 116 U. S. 634, 29 L. ed. 752, 6 Sup. Ct. Rep. 524.

ARTICLE V.

1. **[Indictment; twice in jeopardy; personal and property rights.]**—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in

cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

NOTE.—The provision requiring an indictment by a grand jury as a prerequisite to a trial on a criminal charge does not apply to persons in the military or naval service of the United States, who are at all times subject to the military law; or to persons in the militia so long as they are in such service. The words, "when in actual service in time of war or public danger," apply to the militia only. *Johnson* v. *Sayre* (1895) 158 U. S. 114, 39 L. ed. 916, 15 Sup. Ct. Rep. 773.

Twice in jeopardy. This provision has been the subject of frequent judicial consideration under a great variety of circumstances. Federal decisions and also state decisions should be consulted in a complete study of the subject.

As illustrations of the peculiar situations likely to arise under this provision, it may be noted that in *Moore* v. *Missouri* (1895) 159 U. S. 673, 40 L. ed. 301, 16 Sup. Ct. Rep. 179, it was held that a person was not twice put in jeopardy for the same offense because for a second offense his punishment is increased because of a former offense; and in *Moore* v. *Illinois* (1852) 14 How. 20, 14 L. ed. 309, that a person who by the same act violates a state law and also a Federal statute may be punished under both, and that he is not thereby put twice in jeopardy.

The provision relating to taking private property for public use involves the policy of eminent domain, under which the state or the nation asserts its superior sovereignty as against the individual. All property is subject to the exercise of this power, and while every individual must in a

proper case surrender his property to the sovereign for a public use, the sovereign must pay for it, and the owner is entitled to a just compensation for the property so taken.

ARTICLE VI.

1. **[Accused entitled to speedy and impartial trial.]** —In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Note.—The provision relating to trial by jury applies only to cases in the Federal courts. *Eilenbecker* v. *District Court* (1890) 134 U. S. 35, 33 L. ed. 803, 10 Sup. Ct. Rep. 424.

The provision that an accused person shall be confronted with the witnesses against him was considered in *Mattox* v. *United States* (1895) 156 U. S. 240, 39 L. ed. 410, 15 Sup. Ct. Rep. 337, where it was said that "the primary object of the constitutional provision in question was to prevent depositions or *ex parte* affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness, in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief." It was held in this case that this provision is not infringed by permitting the testimony of a witness sworn upon a former trial to be read against the accused, when a copy of the stenographic report

of the former testimony is supported by the oath of the stenographer that it is a correct transcript of his notes and of the testimony of the deceased witness.

ARTICLE VII.

1. **[Trial by jury preserved.]**—In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

Note.—This section, relating to trial by jury in civil cases, applies only to courts sitting under authority of the United States. *Pearson* v. *Yewdall* (1877) 95 U. S. 294, 24 L. ed. 436. It does not apply to trials in equity cases. *Shields* v. *Thomas* (1855) 18 How. 262, 15 L. ed. 372.

ARTICLE VIII.

1. **[Bail, fines, and punishments to be reasonable.]**—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Note.—This amendment is limited to the Federal judiciary, and is not applicable to the states. *Ex parte Watkins* (1883) 7 Pet. 573, 8 L. ed. 789.

The provision against cruel and unusual punishments is not violated by a statute increasing the punishment for a second offense. *McDonald* v. *Massachusetts* (1901) 180 U. S. 311, 45 L. ed. 542, 21 Sup. Ct. Rep. 389. For an extended review of authorities on the subject of cruel and unusual punishments, see 35 L.R.A. 561.

ARTICLE IX.

1. **[Rights reserved to people.]**—The enumeration, in the Constitution, of certain rights, shall not be con-

strued to deny or disparage others retained by the people.

Note.—This does not apply to the states. *Livingston* v. *Moore* (1833) 7 Pet. 551, 8 L. ed. 781.

ARTICLE X.

1. [States reserve certain powers.]—The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

Note.—This amendment was intended to establish the line of demarkation between powers granted to the general government and powers reserved to the states. In *New York* v. *Miln* (1837) 11 Pet. 102, 139, 9 L. ed. 648, 663, the Supreme Court thus states the rule as to the power and duty of the state: "A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty, of a state to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these the authority of a state is complete, unqualified, and exclusive."

ARTICLE XI.

1. [Judicial power limited.]—The judicial power of the United States shall not be construed to extend to

any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Note.—This amendment was the direct result of the decision of the Supreme Court of the United States in the case of *Chisholm* v. *Georgia* (1793) 2 Dall. 419, 1 L. ed. 440. Chisholm was a citizen of South Carolina, and in 1792 brought an action in the Supreme Court on a money demand against Georgia. Process was served on the governor and attorney general of that state. A remonstrance was filed with the court, on behalf of the state, against the exercise of jurisdiction by the court, and the state did not formally appear in the action. A majority of the court held that such an action could be maintained, and that the state was liable at the suit of a citizen of another state, the decision being based chiefly on the provision in the Federal Constitution, article 3, section 2, clause 1, which, among other things, extended the judicial power of the United States to controversies "between a state and citizens of another state."

Some of the judges took occasion to declare that by operation of the Constitution the United States had become a nation, with sovereign power, as distinguished from the limited powers possessed by the central government under the Articles of Confederation, and that consequently the states, under the clause quoted, had become amenable to the judicial power of the nation. The decision was rendered in February, 1793, directing further proceedings in the action against the state on behalf of the plaintiff; and in February, 1794, a judgment against the state was rendered by default.

Following the first decision, several states protested against the assumption of jurisdiction by the Supreme Court, and a resolution was introduced in Congress to amend the Constitution by denying to the Federal courts jurisdiction in actions against a state by citizens of another state. This resolution, which embodied the 11th Amendment, was adopted by the Senate on the 14th of January, 1794, by a vote of 23 to 2, and by the House of Representatives on the 4th of March, by a vote of 81 to none. Some of the states ratified the amendment promptly, but others were slow to act. On the 8th of January, 1798, President John Adams

informed Congress that the amendment had been adopted by three fourths of the states, and that it might therefore be declared to be a part of the Constitution of the United States.

ARTICLE XII.

1. **[Election of President and Vice-President.]**—The electors shall meet in their respective states, and vote, by ballot, for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall

not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Note.—Congress on the 12th of December, 1803, requested the President to submit the amendment to the several states, and on the 25th of September, 1804, it was declared to have been ratified by the requisite number of states. The original provision relating to the election of President and Vice-President will be found in Article 2, section 1, clause 3 (*ante,* 133).

The provision in this amendment, that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates, and the votes shall then be counted," received special consideration in 1877, in consequence of the presidential election in 1876, when both of the great political parties, the Republican and the Democratic, claimed to have carried the country. There was a dispute as to the result. According to the uncontested returns, Rutherford B. Hayes, the Republican candidate for President, had received 163 electoral votes, and Samuel J. Tilden, the Democratic candidate, had received 184 votes. The number required to elect was 185. There were contests from the states of Florida, Louisiana, Oregon, and South Carolina, which four states had 22 votes.

There were differences of opinion in Congress as to the power to determine these contests and to decide which candidate was entitled to the electoral votes from the contested states. For the purpose of providing a method by which the result of the election might be ascertained, Congress on the 29th of January, 1877, passed an act creating an Electoral Commission, with power to determine the result of the contests in the disputed states, and the determination of the Commission was to be final unless overruled by the concurrent action of both Houses of Congress. The Commission was composed of fifteen members,—five justices of the Supreme Court, five senators, and five members of the House of Representatives. As finally constituted, the Commission was composed of eight Republicans and seven Democrats. The majority had power to determine any question submitted to the Commission. The questions involved in the returns from the contested states were heard by the Commission, and all the contests were decided in favor of the Republican candidate, by which he was declared to have received 22 votes in addition to the 163 uncontested votes, making 185 in all, and as a consequence Mr. Hayes was declared elected to the office of President. This peculiar tribunal, created for an extraordinary emergency, had been hitherto unknown in our history.

The questions arising in connection with that election showed the necessity of additional legislation and more particular regulations concerning the counting of electoral votes. Ten years later, on the 3d of February, 1887, Congress passed an act "to fix the day for the meeting of the electors of President and Vice President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon." (24 Stat. at L. 373, chap. 90, U. S. Comp. Stat. 1901, p. 67.) It requires presidential electors to meet in their respective states, and give their votes on the 2d Monday of January next succeeding their appointment. The act contains the following provision:

"That if any state shall have provided, by laws, enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such state,

by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such state is concerned."

This leaves to the states the power to ascertain who have been duly chosen presidential electors. Certificates of the result of the vote in each state for President and Vice-President, as cast by the presidential electors thereof, are to be transmitted to the president of the Senate. For the purpose of counting the votes, Congress is required to meet in joint session on the second Wednesday in February next following a presidential election. The president of the Senate is required to preside at this joint meeting. Each house is to appoint two tellers. Certificates of election and other papers relating thereto are to be opened by the president of the Senate, and by him delivered to the tellers, who are to read the same in the presence and hearing of both houses. The result is to be reported to the president of the senate, who declares the same in the presence of both houses, "which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President of the United States." Objections to the counting of any vote from any state are to be considered by each house separately, and no certificate can be rejected except by the concurrent action of both houses.

With this statute it is not probable that there will soon be another emergency requiring the creation of an electoral commission, or of any similar extraordinary method of determining the result of a presidential election.

The status of presidential electors was considered by the Supreme Court in *Re Green* (*Fitzgerald* v. *Green*) (1889) 134 U. S. 379, 33 L. ed. 953, 10 Sup. Ct. Rep. 586, where it was said: "The sole function of the presidential electors is to cast, certify, and transmit the vote of the state for President and Vice-President of the nation. Although the electors are appointed and act under and pursuant to the Consti-

tution of the United States, they are no more officers or agents of the United States than are the members of the state legislatures when acting as electors of Federal senators, or the people of the states when acting as electors of representatives in Congress." After giving a brief summary of the foregoing act of 1887, the court said: "Congress has never undertaken to interfere with the manner of appointing electors, or, where (according to the now general usage) the mode of appointment prescribed by the law of the state is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors; but has left these matters to the control of the states." It was held that a state court (in Virginia) had jurisdiction to punish fraudulent voting for presidential electors, and that a person convicted and imprisoned for this offense was not entitled to be discharged on a writ of habeas corpus granted by a circuit court of the United States.

ARTICLE XIII.

1. **[Slavery prohibited.]**—Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. **[Enforcement.]**—Congress shall have power to enforce this article by appropriate legislation.

Note.—This amendment embodied in the Constitution one of the great results of the Civil War between the states, which began in 1861 and ended in 1865. The history of slavery need not here be written. It is sufficient to say that African slavery existed in the American colonies from an early period, and had become one of the established institutions of the country at the time of the formation of the Union and the adoption of the Constitution. The effect of it in national affairs is apparent from the compromises included in that instrument relative to the slave trade and to representation in the national Congress. At the outbreak of the Civil War, in 1861, slavery was confined to the South-

ern states, most of which united to form the Southern Confederacy.

In the famous *Dred Scott Case* (*Scott* v. *Sandford,* 19 How. 393, 15 L. ed. 691), decided in March, 1857, the Supreme Court considered and determined the status of African slaves, and of their descendants born in the United States. Scott and his wife and two children were held as slaves in the state of Missouri, and the action was brought to assert their right to freedom.

In 1834 Scott, then unmarried, had been taken by his master to Rock Island, in Illinois, a free state, and had remained there until 1836. He was then taken to Fort Snelling, on the west bank of the Mississippi river, north of the state of Missouri, and in the territory included in the Missouri compromise in which slavery was prohibited. Scott was married in 1836 at Fort Snelling. Here one child was born, and here the family lived until 1838, when they were taken into Missouri, a slave state. They remained in Missouri and were living there when the action was commenced.

As a defense to the action, it was alleged that Scott was not a citizen of the state of Missouri, being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

Chief Justice Taney, who wrote the prevailing opinion in the Supreme Court, thus states the question involved in the case: "Can a negro whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights and privileges and immunities guaranteed by that instrument to the citizen?"

For the purpose of determining whether Scott was a citizen, the Chief Justice reviewed the history of the introduction of slavery and the status of slaves during and at the close of the colonial period, saying, among other things, "that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words" of the Declara-

tion of Independence. "They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect." Speaking of the power of naturalization vested in Congress, he said it is a power "confined to persons born in a foreign country, under a foreign government. It is not a power to raise to the rank of a citizen anyone born in the United States, who from birth or parentage, by the laws of the country, belongs to an inferior and subordinate class."

Various questions relating to citizenship and the relations of citizens to the states and to the nation were considered, and as a result of its deliberations the court rejected Scott's claim to freedom. This claim was based in part upon the fact that Scott had been taken into Illinois, a free state, and it was claimed that he thereupon became free, and could not be again reduced to slavery. Replying to this suggestion the Chief Justice said: "As Scott was a slave when taken into the state of Illinois by his owner, and was there held as such, and brought back in that character, his status as free or slave depended on the laws of Missouri, and not of Illinois." The claim of Scott that he and his family had become free by being taken to Fort Snelling, in the territory in which slavery had been prohibited by the Missouri compromise of 1820, was rejected by the court on the ground that this compromise was unconstitutional and void, and that it was beyond the power of Congress to establish any such prohibition against slavery; "and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident."

The decision in the *Dred Scott Case* deeply intensified the feeling that then agitated the country in relation to slavery, and doubtless contributed largely to the result of the election in 1860, when Abraham Lincoln was elected President. Various questions relating to emancipation, either by states or by the nation, were considered during the early years of the war.

The preliminary proclamation of emancipation was issued

by President Lincoln on the 22d of September, 1862. 12 Stat. at L. 1267, appx. It declared that from and after the 1st day of January, 1863, "all persons held as slaves within any state, or designated part of a state, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free;" and the national government guaranteed to recognize and maintain the freedom of such persons.

The final proclamation of emancipation was issued on the 1st day of January, 1863. 12 Stat. at L. 1269, appx. It designated the states and parts of states then in rebellion against the government of the United States, and proclaimed that "all persons held as slaves within said designated states, and parts of states, are and henceforward shall be free." After stating other guarantees, admonitions, and purposes, the proclamation concluded:

"And upon this act, sincerely believed to be an act of justice warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God."

Mr. Justice Miller, in his opinion in the *Slaughter House Cases* (1872) 16 Wall. 36, 21 L. ed. 394, speaking of the results of the Civil War, said:

"In that struggle slavery, as a legalized social relation, perished. It perished as a necessity of the bitterness and force of the conflict. When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims whose enforced servitude was the foundation of the quarrel. And when hard pressed in the contest these men (for they proved themselves men in that terrible crisis) offered their services, and were accepted by thousands to aid in suppressing the unlawful rebellion. Slavery was at an end wherever the Federal government succeeded in that purpose. The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, when he declared slavery abolished in them all. But the war being over, those who had succeeded in re-establishing the authority of the Federal government were not content to permit this great act of emancipation to rest on the actual results of the contest, or the proclamation of the Executive, both of which might have

been questioned in after times; and they determined to place this main and most valuable result in the Constitution of the restored Union, as one of its fundamental articles."

In the national House of Representatives a proposition was introduced on the 14th of December, 1863, for a constitutional amendment prohibiting slavery throughout the United States. A similar proposition was introduced in the Senate on the 11th of January, 1864, and on the 10th of February was reported by the Senate judiciary committee in the same form in which it was afterwards approved and incorporated in the 13th Amendment. The resolution was adopted by the Senate at that session, but in the House it failed to receive the requisite two-thirds vote.

At the election in November, 1864, Abraham Lincoln was again elected President, and in his next regular message, transmitted to Congress at the opening of the session in the following December, he referred to the previous action on the amendment by Congress, and recommended that the House reconsider its action and adopt the amendment. The House adopted the amendment on the 31st of January, 1865. On the 1st of February both houses adopted a resolution submitting the amendment to the legislatures of the several states. On the 18th of December, 1865, William H. Seward, Secretary of State, certified that the amendment had been ratified by twenty-seven out of thirty-six states, and that, having received the assent of three fourths of all the states, the amendment had "become valid, to all intents and purposes, as a part of the Constitution of the United States."

The language of the 13th Amendment is not new in our history. In an ordinance adopted by the Continental Congress on the 13th of July, 1787, for the government of the territory northwest of the Ohio river, commonly known as the "Ordinance of 1787," it was declared that "there shall be neither slavery nor involuntary servitude in the said territory; otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

Again, the act of Congress of March 6, 1820 (3 Stat. at L. 548, chap. 22), providing for the admission of Missouri as a state, contained the provision that in "all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty

minutes north latitude, not included within the limits of the state contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be and is hereby forever prohibited." As already noted, this provision was held unconstitutional in the *Dred Scott Case.*

Other similar phraseology had been used in statutes and public documents, and the statesmen who framed the 13th Amendment were therefore familiar with the forms of expression suitable for a statement of the great principle of universal freedom.

ARTICLE XIV.

1. **[Rights of citizens.]**—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. **[Representation in Congress.]**—Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of represen-

tation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3. **[Disabilities of persons engaging in rebellion.]**—No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. **[Public debts confirmed, certain claims not to be paid.]**—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

5. **[Enforcement of article.]**—The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Note.—A resolution submitting the 14th Amendment to the several states was adopted by Congress on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted a

concurrent resolution reciting that the amendment had been ratified by more than three fourths of the states, and directing the Secretary of State to promulgate the amendment. On the 28th of July following, the Secretary, Mr. Seward, made a certificate promulgating the amendment, as required by the act of 1818, and the preceding resolution of Congress.

The conditions which led to the adoption of this amendment are thus stated by Mr. Justice Miller in his opinion in the *Slaughter House Cases, supra*:

"The process of restoring to their proper relations with the Federal government and with the other states those which had sided with the Rebellion, undertaken under the proclamation of President Johnson in 1865, and before the assembling of Congress, developed the fact that, notwithstanding the formal recognition by those states of the abolition of slavery, the condition of the slave race would, without further protection of the Federal government, be almost as bad as it was before. Among the first acts of legislation adopted by several of the states in the legislative bodies which claimed to be in their normal relations with the Federal government, were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value, while they had lost the protection which they had received from their former owners, from motives both of interest and humanity.

"They were in some states forbidden to appear in the towns in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. They were excluded from many occupations of gain, and were not permitted to give testimony in the courts in any case where a white man was a party. It was said that their lives were at the mercy of bad men, either because the laws for their protection were insufficient or were not enforced.

"These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced upon the statesmen who had conducted the Federal government in safety through the crisis of the Rebellion, and who supposed that by the 13th Article of Amendment they had secured the result of their labors, the conviction that something more was necessary in the way of constitutional

protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition for the 14th Amendment, and they declined to treat as restored to their full participation in the government of the Union the states which had been in insurrection, until they ratified that article by a formal vote of their legislative bodies. . . . It declares that persons may be citizens of the United States without regard to their citizenship of a particular state, and it overturns the Dred Scott decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish citizenship of the negro can admit of no doubt."

The amendment "is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has often been recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in the *Dred Scott Case*, and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States, are citizens of the United States. . . . But the opening words, 'all persons born,' are generally, not to say universally, restricted only by place and jurisdiction, and not by color or race." *United States* v. *Wong Kim Ark* (1898) 169 U. S. 676, 42 L. ed. 900, 18 Sup. Ct. Rep. 456, where it is also said that "the Constitution nowhere defines the meaning of the word ['citizen'], either by way of inclusion or of exclusion, except in so far as this is done by the affirmative declaration that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.' In this, as in other respects, it may be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution."

A corporation is not a citizen within the meaning of the clause relating to the privileges and immunities of citizens. *Blake* v. *McClung* (1898) 172 U. S. 239, 43 L. ed. 432, 19 Sup. Ct. Rep. 165. A corporation is not a citizen within the meaning of this provision, and hence has not privileges and immunities secured to citizens against state legislation. *Orient Ins. Co.* v. *Daggs* (1899) 172 U. S. 561, 43 L. ed.

554, 19 Sup. Ct. Rep. 281. But a corporation is a person within the meaning of the 14th Amendment, declaring that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. *Smyth* v. *Ames* (1898) 169 U. S. 518, 42 L. ed. 839, 18 Sup. Ct. Rep. 418.

The police power of the state is not affected by the 14th Amendment. *Barbier* v. *Connolly* (1885) 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. Rep. 357.

See 14 L.R.A. 579, for a review of the authorities relating to equality of rights under this amendment.

A woman is or may be a citizen, and is therefore included in the "persons" described in the 14th Amendment; but the amendment does not confer on her the right to vote. The right of suffrage is not one of the privileges and immunities protected by the Constitution except as provided in the 15th Amendment. In general, the right to vote is regulated by the Constitution and laws of the states, and the right is not conferred on anybody by the 14th Amendment. *Minor* v. *Happersett* (1874) 21 Wall. 162, 22 L. ed. 627.

ARTICLE XV.

1. **[Right of suffrage protected.]**—The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude.

2. **[Enforcement.]**—The Congress shall have power to enforce this article by appropriate legislation.

Note.—This amendment was submitted to the states by a congressional resolution adopted February 27, 1869. On the 30th of March, 1870, Hamilton Fish, Secretary of State, certified that the amendment had received the assent of three fourths of all the states, and had therefore become a part of the Constitution.

The action of New York on this amendment presents an interesting item of history, and shows the severe political

tension which existed during the period immediately after the close of the Civil War. A concurrent resolution ratifying the amendment was passed by the New York assembly on the 17th of March, 1869, and by the senate on the 14th of April following. The Republicans then had a majority in both branches of the legislature. The Democratic party was opposed to the amendment. The Democratic State Convention, which met September 22, 1869, included in its platform a resolution declaring that the amendment had been proposed "in a spirit of contempt of the people and of the right of the states to regulate the elective franchise," and was "intended to place the question of suffrage in the hands of the central power, and, by debasing, to demoralize, the representative system."

As a result of the election in 1869 the Democrats secured control of the legislature, and at the opening of the next session, on the 4th of January, 1870, a resolution was introduced declaring that the resolution of 1869, ratifying the amendment "be and it hereby is repealed, rescinded, and annulled," and that the legislature "refuses to ratify the above recited proposed 15th Amendment to the Constitution of the United States, and withdraws absolutely any expression of consent heretofore given thereto, or ratification thereof." This resolution was adopted by both branches of the legislature on the 5th of January, 1870. In the certificate promulgating the amendment, Mr. Fish includes New York among the ratifying states. Referring to the action taken by the legislature of 1870, the Secretary says in the certificate that it "appears from an official document on file in this department that the legislature of the state of New York has since passed resolutions claiming to withdraw the said ratification of the said amendment, which had been made by the legislature of that state, and of which official notice had been filed in this Department." According to the certificate the ratification was complete without New York.

It will be observed that this amendment is negative in form. It does not confer the right to vote, but prohibits any discrimination in such right on account of race, color, or previous condition of servitude. *United States* v. *Reese* (1875) 92 U. S. 217, 23 L. ed. 564; *Minor* v. *Happersett*, *supra*.

In the *Slaughter House Cases* (1872) 16 Wall. 71, 21 L. ed. 407, Mr. Justice Miller makes the following interesting observations concerning the history and purpose of the 15th Amendment: "A few years' experience satisfied the thoughtful men who had been the authors of the other two amendments that, notwithstanding the restraints of those articles on the states, and the laws passed under the additional powers granted to Congress, these were inadequate for the protection of life, liberty, and property, without which freedom to the slave was no boon. They were in all those states denied the right of suffrage. The laws were administered by the white man alone. It was urged that a race of men distinctively marked, as was the negro, living in the midst of another and dominant race, could never be fully secured in their person and their property without the right of suffrage. . . . The negro, having, by the 14th Amendment, been declared to be a citizen of the United States, is thus made a voter in every state of the Union. . . . It is true that only the 15th Amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race and designed to remedy them as the 15th." But the amendment is general in terms, and applies to all persons, whether formerly in slavery or not, and all persons are equally entitled to its protection.

NATURALIZATION LAWS AND REGULATIONS.

The laws of the United States on the subject of naturalization are printed below, followed by the Naturalization Regulations, made by the Department of Commerce and Labor, which supplement the statutes in respect to the proceedings to be taken by aliens who seek to become naturalized.

NATURALIZATION LAWS.

The laws of the United States on the subject of naturalization are to be found in several different enactments. Some of them are in the United States Revised Statutes, under the title "Naturalization," including §§ 2166, 2169, 2171, and 2174. Others are found in the United States Statutes at Large, Vol. 22, page 58, § 14, and Vol. 28, page 124. There is also an act to validate certain certificates of naturalization, passed June 29, 1906, found in Stat. 1905–6, part 1, page 630, and the general naturalization law, passed June 29, 1906, found in Stat. 1905–6, part 1, page 596.

[In regard to the acquisition of citizenship by other means than naturalization, see §§ 1992 to 1995, inclusive, of the United States Revised Statutes. See also § 2172 of the Revised Statutes.]

UNITED STATES REVISED STATUTES.

TITLE, "NATURALIZATION."[a]

Honorably discharged soldiers exempt from certain formalities.

Sec. 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the Armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Aliens of African nativity and descent.

Sec. 2169. (*As amended, 1875.*)—The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity, and to persons of African descent.

Naturalization to alien enemies prohibited.

Sec. 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his

[a]For a list of sections repealed see post, 194, sec. 26 of act of June 26, 1906.

application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Alien seamen of merchant vessels.

Sec. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citi-

zen, be deemed such, after the filing of his declaration of intention to become such citizen.

TWENTY-SECOND STATUTES AT LARGE, PAGE 58.

Naturalization of Chinese prohibited.

Sec. 14. That hereafter no state court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

TWENTY-EIGHT STATUTES AT LARGE, PAGE 124.

Aliens honorably discharged from service in Navy or Marine Corps.

Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps.

AN ACT TO VALIDATE CERTAIN CERTIFICATES OF NATURALIZATION.

[Stat. 1905–6, Part I., p. 630.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That naturalization certificates issued after the act approved March third, nineteen hundred and three,

entitled "An Act to Regulate the Immigration of Aliens into the United States," went into effect, which fail to show that the courts issuing said certificates complied with the requirements of section thirty-nine of said act, but which were otherwise lawfully issued, are hereby declared to be as valid as though said certificates complied with said section: *Provided,* That in all such cases applications shall be made for new naturalization certificates, and when the same are granted, upon compliance with the provisions of said act of nineteen hundred and three, they shall relate back to the defective certificates, and citizenship shall be deemed to have been perfected at the date of the defective certificate.

Sec. 2. That all the records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the time when this act takes effect in or from the criminal court of Cook county, Illinois, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this act further validated or legalized.

Approved, June 29, 1906.

Naturalization Act of June 29, 1906.

An Act to Establish a Bureau of Immigration and Naturalization, and To Provide for a Uniform Rule for the Naturalization of Aliens Throughout the United States.

[Stat. 1905–6, Part I., p. 596.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the designation of the Bureau of Immigra-

tion in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said Bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the said Bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

Sec. 2. That the Secretary of Commerce and Labor shall provide the said Bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and other employees as may be necessary for the proper discharge of the duties imposed by this act upon such Bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

Sec. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing,

or which may hereafter be established by Congress in any state, United States district courts for the territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian territory; also all courts of record in any state or territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified—state, territorial, and Federal—shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

Sec. 4. That an alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the

name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States, shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife, and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided,* That if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a

polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the state, territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized, the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention.

Sec. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpœna for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses cannot be produced upon the final hearing other witnesses may be summoned.

Sec. 6. That petitions for naturalization may be made and filed during term time or vacation of the court, and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court; and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided,* That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of

said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

Sec. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

Sec. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who cannot speak the English language: *Provided,* That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further,* That the requirements of this section shall not apply to any alien who has, prior to the passage of this act, declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further,* That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens, and who shall make homestead entries upon the public lands of the United States, and comply in all respects with the laws providing for homestead entries on such lands.

Sec. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered

in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

Sec. 10. That in case the petitioner has not resided in the state, territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside.

Sec. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings, for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition, concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Sec. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him, and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office

a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court, affecting or relating to the naturalization of aliens, as may be required from time to time by the said Bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization, and shall account for the same to the said Bureau whenever required so to do by such Bureau. No certificate of citizenship received by any such clerk, which may be defaced or injured in such manner as to prevent its use as herein provided, shall in any case be destroyed, but such certificate shall be returned to the said Bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

Sec. 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one half of the fees collected by him in such naturalization proceeding; the remaining one half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpœnaing and paying the legal fees of any witnesses for whom he may request a subpœna, and upon the final discharge of such witnesses they shall receive,

if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided,* That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said Bureau as in case of other fees to which the United States may be entitled under the provisions of this act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if, in the opinion of the said Secretary, the business of such clerk warrants such allowance.

Sec. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

Sec. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud, or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days' personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancelation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within

their respective jurisdictions who have such certificates of citizenship, and who have taken permanent residence in the country of their nativity, or in any other foreign country; and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship, and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record, and to cancel such original certificate of citizenship upon the records, and to notify the Bureau of Immigration and Naturalization of such cancelation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

Sec. 16. That every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person con-

victed of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

Sec. 17. That every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer; and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same,—shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

Sec. 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this act, except upon a final order under the hand of

a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

Sec. 19. That every person who, without lawful excuse, is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars.

Sec. 20. That any clerk or other officer of a court having power under this act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings, or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

Sec. 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings, [or] to demand, charge, collect, or receive any other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor, and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

Sec. 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person act-

ing under authority of this act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

Sec. 23. That any person who knowingly procures naturalization in violation of the provisions of this act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Sec. 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this act unless the indictment is found or the information

is filed within five years next after the commission of such crime.

Sec. 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this act shall go into effect, the existing naturalization laws shall remain in full force and effect.

Sec. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three, of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all acts or parts of acts inconsistent with or repugnant to the provisions of this act, are hereby repealed.

Sec. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION.

(Invalid for all purposes seven years after the date hereof.)

....., ss:

I, ..., aged .... years, occupation ....., do declare on oath (affirm) that my personal description is: Color ....., complexion ....., height ....., weight ....., color of hair ....., color of eyes ....., other visible distinctive marks .....; I was born in ..... on the ..... day of ....., anno Domini .....; I now reside at .....; I emigrated to the United States of America from ..... on the vessel .....; my last foreign residence was ..... It is my bona fide in-

tention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ....., of which I am now a citizen (subject); I arrived at the (port) of ....., in the state (territory or district) of ..... on or about the ..... day of ..... anno Domini .....; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant) .....

Subscribed and sworn to (affirmed) before me this .... day of ....., anno Domini .....

[L. S.] .....

(Official character of attestor.)

PETITION FOR NATURALIZATION.

..... Court of .....

In the matter of the petition of.....to be admitted as a citizen of the United States of America.

To the ..... Court:

The petition of .... respectfully shows:

First. My full name is ....

Second. My place of residence is number .... street, city of ....., state (territory or district) of .....

Third. My occupation is .....

Fourth. I was born on the ..... day of ..... at .....

Fifth. I emigrated to the United States from ....., on or about the ..... day of ....., anno Domini ....., and arrived at the port of....., in the United States, on the vessel .....

Sixth. I declared my intention to become a citizen of the United States on the ..... day of .... at ....., in the ..... court of .....

Seventh. I am .. married. My wife's name is .... She was born in ..... and now resides at ..... I have ..... children, and the name, date, and place of birth and place of residence of each of said children is as follows: ....; ....; ....

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to ....., of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since ....., anno Domini ....., and in the state (territory or district) of ..... for one year at least next preceding the date of this petition, to wit, since ..... day of ....., anno Domini .....

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the ..... court of ..... at ....., and the said petition was denied by the said court for the following reasons and causes, to wit, ..., and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Commerce and Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated .....

(Signature of petitioner) ....

...., ss:

...., being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this ..... day of ....., anno Domini .....

[L. S.] ....,

Clerk of the ..... Court.

AFFIDAVIT OF WITNESSES.

..... Court of .....

In the matter of the petition of.....to be admitted a citizen of the United States of America.

...., ss:

...., occupation ....., residing at ....., and ...., occupation ....., residing at ..... each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known ...., the petitioner above mentioned, to be a resident of the

United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the state (territory or district) in which the above-entitled application is made for a period of ..... years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

....

....

Subscribed and sworn to before me this ..... day of ....., nineteen hundred and .....

[L. S.] ....,

(Official character of attestor.).

CERTIFICATE OF NATURALIZATION.

Number .....

Petition, volume ....., page .....

Stub, volume ....., page .....

(Signature of holder) ....

Description of holder: Age, ...; height, ...; color, ...; complexion. .....; color of eyes,.....; color of hair, ...; visible distinguishing marks,..... Name, age, and place of residence of wife, ..., ..., ... Names, ages, and places of residence of minor children, ..., ..., ...; ....., ..., ...; ....., ..., ...

..... ss:

Be it remembered, that at a ..... term of the ..... court of ....., held at ..... on the ..... day of ....., in the year of our Lord nineteen hundred and ....., ..., who previous to his (her) naturalization

was a citizen or subject of ....., at present residing at number .... street, ... city (town), ... state (territory or district), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this state for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that ..he was entitled to be so admitted, it was thereupon ordered by the said court that ..he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the ..... day of ....., in the year of our Lord nineteen hundred and ....., and of our independence the .....

[L. S.] ....,
(Official character of attestor.).

STUB OF CERTIFICATE OF NATURALIZATION.

No. of certificate, ...
Name ....; age .....
Declaration of intention, volume ....., page .....
Petition, volume ....., page .....
Name, age, and place of residence of wife, ..., ..., ... Names, ages, and places of residence of minor children, ..., ..., ...; ....., ..., ..., ..., ..., ..., ..., ..., ..., ...
Date of order, volume ..... page .....
(Signature of holder) ....

Sec. 28. That the Secretary of Commerce and Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this act shall be admitted in evidence equally with the originals in any and all proceedings under this act and in all cases in which the originals thereof might be admissible as evidence.

Sec. 29. That for the purpose of carrying into effect the provisions of this act there is hereby appropriated the sum of one hundred thousand dollars, out of any moneys in the Treasury of the United States not otherwise appropriated, which appropriation shall be in full for the objects hereby expressed until June thirtieth, nineteen hundred and seven; and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes of the United States shall not be applicable in any way to this appropriation.

Sec. 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

Sec. 31. That this act shall take effect and be in force from and after ninety days from the date of its passage: *Provided,* That sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this act.

Approved, June 29, 1906.

NATURALIZATION REGULATIONS.

Department of Commerce and Labor,
Office of the Secretary,
Washington, October 2, 1906.

1. On and after September 27, 1906, declarations of intention to become citizens of the United States shall be filed with the clerks of such state courts only as have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited."

2. Declarations of intention made prior to September 27, 1906, before clerks of courts having jurisdiction to naturalize aliens under the provisions of the law existing at the time such declarations were made, may be used in lieu of the declarations required by the act of June 29, 1906, at any time after the expiration of two years from the date when made.

3. Aliens who have made declarations of intention prior to September 27, 1906, under the provisions of law in force at the time of making such declarations, cannot be required, as a preliminary to filing their petitions for naturalization, to file new declarations of intention under the act of June 29, 1906; nor are such aliens required, as a condition precedent to naturalization, to speak the English language.

4. Aliens who make the declaration of intention required by law prior to September 27, 1906, unless they can be naturalized before that date under the laws then in force, must comply with the requirements of the act

of June 29, 1906, in regard to the filing of petitions for naturalization and furnishing proof, except that they will not be required to speak the English language or to sign petitions in their own handwriting.

5. Declarations of intention will be furnished in bound volumes (Form 2202, 2202A, or 2202B), as a court record, varying in size according to the amount of such business transacted by the court. In addition to the bound records, the duplicate and triplicate declarations of intention (Form 2203) will be furnished as loose sheets attached together and perforated, so that they can be readily torn apart, the triplicate to be given to the petitioner and the duplicate to be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization.) Each bound record will consist of the original declarations of intention, paged in consecutive order and indexed. These volumes are to be numbered and will form a permanent record of the court.

6. The original of the petitions for naturalization will also be furnished in bound volumes (Form 2204, 2204A, or 2204B) of varying size, paged in consecutive order, and indexed. The duplicate petitions (Form 2205) will be furnished as loose sheets and must be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) within thirty days after execution. The original petitions for naturalization must be filled out and signed in the bound volumes, and remain as a part of the permanent records of the office in which filed.

7. Certificates of naturalization (Form 2207) will be supplied in bound volumes consisting of original and duplicate certificates and stubs. Each original and duplicate certificate and the stub will be given the same serial number, the stub to the original certificate bearing a page number in addition to its serial number. Each book will

bear a volume number, and the volume number and page of the stub must be given on the face of the certificate. The original certificate will be given to the petitioner in accordance with the final order of the court, and the duplicate shall be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) by registered mail within thirty days after the issuance of the original, the stub to the original constituting a part of the permanent records of the court.

8. No certificate of naturalization shall be issued to a petitioner until after the judge of the court granting naturalization has signed the order to that effect.

9. Clerks of courts will be furnished with requisition blanks (Form 2201) on which are listed, by number and title, all blank forms, including record and order books, to be used in the naturalization of aliens, and these forms must be obtained exclusively from the Department of Commerce and Labor (Division of Naturalization), none other being official. Manila envelopes or jackets (Form 2211) will be furnished to clerks in which to place the triplicate declaration of intention or the original certificate of naturalization before delivering them to the person making the declaration or to the person naturalized.

10. The first supply of blank forms will be furnished upon the written application of the clerks of courts having jurisdiction to naturalize aliens, accompanied, in the case of clerks of state courts, by authoritative evidence (preferably the certificate of the attorney general of the state) that the courts of which such clerks are officers have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Subsequent supplies of such blank forms will be furnished the clerks of courts having jurisdiction to naturalize aliens upon the receipt by the Bureau

of Immigration and Naturalization (Division of Naturalization) of requisitions made on Form 2201.

11. Clerks of courts when first making applications to the Bureau of Immigration and Naturalization (Division of Naturalization) for supplies of the blank forms required in the naturalization of aliens shall state, as to the two years next preceding the date of such application, the number of declarations of intention filed with them and the number of orders of naturalization made by their courts, respectively.

12. All applications for supplies of certificates of naturalization (Form 2207) should be accompanied by a statement of the number, if any, of certificates of naturalization issued by the clerks of courts making such applications since June 1, 1903, if such certificates failed to comply with the requirements of the immigration act of March 3, 1903.

13. Where the same court holds sessions at different places, whether a clerk is appointed at each of said places or the one clerk is required to transact the business of the court wherever it may sit, separate supplies shall be kept, in order to comply with the requirements of section 14 of the naturalization act, which provides that the bound declarations of intention and of petitions for naturalization shall be in chronological order.

14. In every case in which the name of a naturalized alien is changed by order of court, as provided in section 6, the clerks of courts are required to report to the Bureau of Immigration and Naturalization (Division of Naturalization), when transmitting to it the duplicate of the certificate of naturalization of the alien whose name is changed, both the original and the new name of the said person.

15. Within thirty days after posting the notice (Form

2206) required by section 5 of the naturalization act of June 29, 1906, the clerk shall inform the Bureau of Immigration and Naturalization (Division of Naturalization), on Form 2209, of the date, as near as may be, for the final hearing of each and every petition for naturalization.

16. Applications for the issuance of declarations of intention (Form 2203) or certificates of naturalization (Form 2207), in lieu of declarations of intention or certificates of naturalization claimed to have been lost or destroyed, shall be made under oath to the clerk of the court by which any such declarations of intention or certificates of naturalization were originally issued, and shall contain full information in regard to the lost or destroyed papers, and as to the time, place, and circumstances of such alleged loss or destruction. The clerk shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the above-mentioned applications, together with such information as he may have bearing upon the merits thereof, for investigation, and no such paper so applied for shall be issued until the Bureau of Immigration and Naturalization (Division of Naturalization) reports the results of its investigation as to the merits of the application.

17. In every case in which the clerk of a court issues, in accordance with the preceding rule, a declaration of intention (Form 2203) or a certificate of naturalization (Form 2207), upon proof of the loss or destruction of the original, he shall make an entry on the original declaration, or on the stub of the original certificate of naturalization, as the case may require, showing the issuance of a new paper and the number thereof, and shall immediately thereafter forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the duplicate of any such paper so issued.

18. If an alien is physically unable to speak, that fact should be stated in his petition for naturalization in lieu of the statement, "I am able to speak the English language."

19. Within thirty days after the sitting of a court in naturalization cases, the clerk of such court shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) on Form 2210 a list containing the name of each and every alien who, during such sitting of court, has been denied naturalization, and the reason or reasons for such denial.

20. The names of aliens making declarations of intention, or filing petitions for naturalization, must be entered in full in the appropriate places on the various blank forms, without abbreviation, and the signatures of such aliens must also be written out without abbreviation. Great care should be taken to get in every case the correct spelling of names.

21. Clerks of courts shall not receive declarations of intention (Form 2203) to become citizens from other aliens than white persons and persons of African nativity or of African descent.

22. Beginning with October 1, 1906, and on the first working day of each and every month thereafter, clerks of courts shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) duplicate declarations of intention and petitions for naturalization filed, and all duplicates of certificates of naturalization issued, during the preceding month. Duplicate petitions for naturalization and duplicate certificates of naturalization shall be forwarded by registered mail; and duplicate declarations of intention shall be sent therewith, provided the combined weight of the documents does not exceed 4 pounds, otherwise they shall be forwarded in a

separate package by unregistered mail. The clerks making such shipments are required to notify the Chief of the Division of Naturalization of the date thereof, by unregistered mail, on Form 2208, provided for that purpose. In transmitting petitions clerks of courts are directed to state that the names of the petitioners and their witnesses have been conspicuously posted, as required by law.

23. All fees provided for in section 13 of the act of June 29, 1906, collected by clerks of courts during any quarter of a fiscal year, shall be accounted for within thirty days after the close of such quarter, on Form 2212, provided for that purpose; and one half of all moneys so collected shall be remitted to the Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, with said quarterly accounts. In cases where no naturalization business is transacted during any quarter, said blank form shall be forwarded as aforesaid, with the words "No transactions" noted thereon.

24. Under section 2166 of the Revised Statutes, an honorably discharged soldier who is of the age of twenty-one years and upward may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Also, under the provisions of the act of July 26, 1894, chapter 165, any alien of the age of twenty-one years and upward, who has enlisted, or may enlist, in the United States Navy or Marine Corps, having been honorably discharged therefrom, after a residence of five years may be admitted to become a citizen of the United States without making the declaration of intention required of other aliens. Clerks of courts are therefore instructed to appropriately note upon the petition of such discharged alien soldier, or member of the Navy or Marine Corps, and upon the

stub of the certificate of naturalization issued to him, in lieu of the information required thereon as to the filing of the declaration of intention, that the petitioner was an honorably discharged alien soldier, or member of the Navy or Marine Corps, and applied for citizenship under the said section 2166, or the act of July 26, 1894.

25. So far as is practicable, the clerks of courts having jurisdiction under the provisions of the naturalization laws will be furnished with appropriately addressed envelopes for communicating with the Bureau. When not using such envelopes, however, all communications, in addition to the other necessary address, should be plainly marked "Division of Naturalization."

26. Clerks of courts having jurisdiction to naturalize under the provisions of the act of June 29, 1906, are requested, in case the foregoing rules and regulations fail to remove from their minds doubt as to the proper course of action in any case, to write to the Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, for instructions before taking such action.

V. H. Metcalf,
Secretary.

EXPATRIATION LAW.

[PUBLIC—No. 193.]

An Act in Reference to the Expatriation of Citizens and Their Protection Abroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law, and has resided in the United States for three years, a passport may be issued to him entitling him to the protection of the government in any foreign country: *Provided,* That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention.

Sec. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and the

place of his general abode shall be deemed his place of residence during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also,* That no American citizen shall be allowed to expatriate himself when this country is at war.

Sec. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may assume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

Sec. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

Sec. 5. That a child born without the United States, of alien parents, shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided,* That such naturalization or resumption takes place during the minority of such child: *And provided further,* That the citizenship of such minor child shall begin at the time

such minor child begins to reside permanently in the United States.

Sec. 6. That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States, and who continue to reside outside the United States, shall, in order to receive the protection of this government, be required, upon reaching the age of eighteen years, to record at an American consulate their intention to become residents and remain citizens of the United States, and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

Sec. 7. That duplicates of any evidence, registration, or other acts required by this act shall be filed with the Department of State for record.

Approved, March 2, 1907.

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